Supreme Court, U. S.
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IN THE

SUPREME COURT OF THE UNITED STATES

October Term, 1976

No. 76-352

E. C. CHAPPELLE, JR.,

Appellant,

versus

THE GREATER BATON ROUGE AIRPORT DISTRICT, ET AL,

Appellees.

On Appeal from the Supreme Court of the State of Louisiana

JURISDICTIONAL STATEMENT

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E. C. CHAPPELLE, JR.,
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THE GREATER BATON ROUGE AIRPORT DISTRICT, ET AL,
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On Appeal from the Supreme Court of the State of Louisiana

JURISDICTIONAL STATEMENT

This is an appeal from the final judgment of the First Circuit Court of Appeal for the State of Louisiana, rendered on March 1, 1976, affirming a trial court judgment sustaining against Federal Constitutional challenge on equal protection grounds, the requirement of ownership of "assessed property" as a requisite to holding an appointive municipal position. The Supreme Court of Louisiana denied writs of Certiorari and Review on June 9, 1976, despite this constitutional attack.

THE OPINIONS BELOW

The Nineteenth Judicial District Court for the Parish of East Baton Rouge, State of Louisiana rendered a written opinion which is not reported, but is printed as Appendix C to this statement (pp. 26-33 infra). The First Circuit Court of Appeal, State of Louisiana rendered its opinion (Appendix D, pp. 35-43 infra.) reported at 329 So.2d 810. The denial of the writs of Certiorari and Review and other remedial writs by the Supreme Court of Louisiana is reported in the memorandum decision at 332 So.2d 821. No other written opinions have been delivered.

JURISDICTION

This case began when the appellant was removed from his appointed position as a Commissioner of the municipal body known as The Greater Baton Rouge Airport Commission for the reason that appellant was not qualified to serve as a member of this Airport Commission, since at the time of his appointment, he owned no property "assessed" in the Parish of East Baton Rouge, as required by Louisiana Act 151 of 1969, as implemented by East Baton Rouge Council Resolution Number 8645, adopted on January 14, 1970, although he owned considerable amounts of personal or movable property. This appellant sought injunctive relief and a declaratory judgment at the trial court to the effect that Louisiana Act 151 of 1969 was violative of the Equal Protection and Due Process Clauses of the Fourteenth Amendment to the United States Constitution. Despite the irrational requirements of ownership of "assessed property" as a requisite to qualification as a member of this appointive municipal body, asserted throughout this suit by means of challenge on Con-

stitutional grounds, the trial court upheld the constitutionality of Louisiana Act 151 of 1969. This appellant took timely appeal to the First Circuit Court of Appeal for the State of Louisiana where again the constitutionality of Louisiana Act 151 of 1969 was affirmed. As a requirement for seeking discretionary review to the Supreme Court of Louisiana, this appellant timely requested a rehearing from the First Circuit Court of Appeal, State of Louisiana, which request was refused. Upon the refusal of the rehearing on April 12, 1976, the appellant sought all remedial writs from the Supreme Court of Louisiana, including writs of Certiorari and Review, again urging the unconstitutionality of Louisiana Act 151 of 1969. On June 9, 1976, the Supreme Court of Louisiana, the highest court of the State of Louisiana, refused to consider appellant's constitutional challenge upon Louisiana Act 151 of 1969.

This appellant has continuously urged the infirmity of Louisiana Act 151 of 1969 in light of the Equal Protection and Due Process Clauses of the Fourteenth Amendment to the United States Constitution throughout the entire state court proceedings. This appellant has timely sought judicial review of the constitutionality of Louisiana Act 151 of 1969 through the Supreme Court of Louisiana, the highest court of that state. Despite the question of the validity and constitutionality of Louisiana Act 151 of 1969 in light of the Equal Protection and Due Process Clauses of the Fourteenth Amendment to the United States Constitution, the highest court of Louisiana, the Supreme Court of Louisiana, has upheld the validity of Louisiana Act 151 of 1969.

Notice of appeal to the Supreme Court of the United States was timely filed by the appellant in the 19th Judicial District Court of the Parish of East Baton Rouge, State of

Louisiana, the court now possessed of the record in this matter on the 13th day of August, 1976.

The jurisdiction of the Supreme Court of the United States to review this decision by appeal is conferred by Title 28, United States Code, Section 1257(2); Federal Code Annotated, Title 28, Section 1257(2). The following decisions sustain the jurisdiction of the Supreme Court of the United States to review the judgment of the Louisiana court, on direct appeal in this:

Huffman v. Pursue, Ltd. (1975)
95 S.Ct. 1200, Rehearing denied 95 S.Ct. 1969

Cox Broadcasting Corp. v. Cohn, (1975)
95 S.Ct. 1029

Hall v. Beals, (1969)
90 S.Ct. 200

STATUTES INVOLVED

Act 151 of 1969, located in the Louisiana Acts of 1969 at page 383, states in Section 3 thereof, the portion of that Act pertinent to this case:

> "Subject to the provisions of Section 5 hereof, there is hereby further created and established a 'Board of Commissioners' (hereinafter called 'Commission') composed of nine (9) members from East Baton Rouge Parish appointed by Authority, and with terms of office designated by Authority. Such appointees shall be qualified electors

> in and owning property assessed in East Baton Rouge Parish and may be members of the City Council of the City of Baton Rouge or the Parish Council of the Parish of East Baton Rouge. The members of the Airport Commission of the Parish appointed and qualified as of the effective date of this act shall constitute the initial members of Commission."

East Baton Rouge Council Resolution Number 8645, located in Title 15, Chapter 1, Section 2 of the Code of Ordinances, Parish of East Baton Rouge, Louisiana at page 231, implementing Louisiana Act 151 of 1969 states in pertinent part:

"SECTION 2. Creation of District. That there is hereby created pursuant to the authority of Article 14, Section 14 (d. 2) and Act 151 of 1969, an Airport District entitled 'Greater Baton Rouge Airport District,' said District to be composed of the whole of the Parish of East Baton Rouge and to constitute a subdivision of the State of Louisiana within the meaning of Article 10, Section 10, and Article 14, Section 14 of the Constitution of Louisiana. The governing authority of the Airport District shall consist of (i) an Airport Authority; and (ii) a Board of Commissioners, as provided hereinafter and as is provided for in Act 151 of 1969. 'Airport Authority,' subject to the requirements of Section 5 of Act 151 of 1969, consists of the Mayor and Parish Council of the Parish of East Baton Rouge and shall be known and herein referred to as 'Authority.' The officers of the Parish Council and the Parish under the Plan of Government shall be the officers of the Authority. The Board of Commissioners shall be known as 'Board of Commissioners of Greater Baton Rouge Airport District' and is hereinafter referred to as 'Commission.'"

QUESTIONS PRESENTED BY THE APPEAL

The following questions are the only questions presented by this appeal:

1. Does the United States Supreme Court decision styled *Turner v. Fouche* 396 U.S. 346, 90 S.Ct. 532(1970) mandate that Louisiana Act 151 of 1969 be struck down as being violative of the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution?

2. Whether Louisiana Act 151 of 1969 which sets forth a classification of "assessed property" owners and non-owners of "assessed property," a classification not yet examined by this court, is violative of appellant's equal protection and due process rights as provided in the Fourteenth Amendment to the United States Constitution. Incidental thereto is the question whether the criterion of "assessment" as set forth in Louisiana Act 151 of 1969 is somehow rationally related to the legislative objective sought in enacting that legislation—that is, does ownership of "assessed property" make one more qualified to serve on the Airport Commission than someone who is not the owner of "assessed property," but yet may have substantial connections with the community, may own substantial amounts of non-assessed property, or may have great expertise in the field of aviation.

3. Whether the right to hold an appointed office is a "fundamental right" within the "compelling state interest test" of the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution.

STATEMENT OF THE CASE

This appellant, E. C. Chappelle, Jr. for a period of five years, occupied the position of executive director and secretary of The Greater Baton Rouge Airport District. On May 13, 1974, appellant resigned from this salaried position and was appointed as a commissioner on The Greater Baton Rouge Airport Commission. Subsequently, prior to the termination of the appointed term, the East Baton Rouge Parish Clerk, based upon a legal opinion rendered by The East Baton Rouge Parish Attorney, declared the appellant's position on The Greater Baton Rouge Airport Commission vacant as it was the opinion of The Baton Rouge Parish Attorney that appellant was not qualified to serve as a member of the Airport Commission since at the time of his appointment, appellant owned no property "assessed" in East Baton Rouge Parish, as required by Louisiana Act 151 of 1969, as implemented by East Baton Rouge Parish Council Resolution Number 8645, adopted on January 14, 1970. As a result of this legal opinion rendered by The East Baton Rouge Parish Attorney and the declaration of vacancy made by the East Baton Rouge Parish Clerk, appellant on March 4, 1975, at The Greater Baton Rouge Airport Commission meeting was formally denied his position as a member of the Airport Commission and removed therefrom.

On February 26, 1975, appellant initially filed a petition in the 19th Judicial District Court in the Parish of East Baton Rouge, State of Louisiana, for injunctive relief seeking to enjoin the municipal authorities from removing the appellant from his position on the Airport Commission alleging that appellant had met all the qualifications of Louisiana Act 151 of 1969 and alternatively that Louisiana Act 151 of 1969 was

violative of the Equal Protection and Due Process Clauses of the Fourteenth Amendment to the United States Constitution. Appellants injunctive relief was denied and on March 4, 1975, appellant was removed from his position of the Airport Commission. On March 5, 1975, the appellant sought in the 19th Judicial District Court for the Parish of East Baton Rouge, State of Louisiana, a declaratory judgment requesting that appellant be deemed to have met the qualifications imposed by Louisiana Act 151 of 1969 and in the alternative requested that Louisiana Act 151 of 1969 be held infirm as violating the Equal Protection and Due Process Clauses of the Fourteenth Amendment to the United States Constitution. On July 23, 1975, the trial judge held (Appendix C infra, pp. 26-33) that appellant had not met the qualification imposed by Louisiana Act 151 of 1969 and that Louisiana Act 151 of 1969 was constitutional. The trial judge stated that the right to an appointed office, not being a fundamental right, must be tested by the traditional test of equal protection. The trial judge felt that there was a rational basis for the requirement of ownership of "assessed property" as opposed to "non-assessed property," imposed by Louisiana Act 151 of 1969.

To the trial judge's ruling, the appellant timely appealed on July 28, 1975, to the First Circuit Court of Appeal for the State of Louisiana, the next step in Louisiana's appellant process. Again in this appellate court, the appellant urged the unconstitutionality of Louisiana Act 151 of 1969 in light of the Equal Protection and Due Process Clauses of the Fourteenth Amendment to the United States Constitution. The First Circuit Court of Appeal for the State of Louisiana likewise utilized the traditional test of equal protection and found that there was a rational basis for the classification imposed by the Louisiana Legislature in enacting Louisiana Act 151 of

1969. This appellant, who has expertise in the field of aviation, and who owns substantial amounts of personal or movable property, yet owned no "assessed property," failed to see how "assessed property" owners were somehow more qualified than non-owners of "assessed property." He, therefore, sought to have the judgment of the First Circuit Court of Appeal of the State of Louisiana reviewed. After first timely requesting a rehearing from the First Circuit Court of Appeal, which was refused on April 12, 1976, appellant sought a review from the Supreme Court of Louisiana.

Since appellant had no right to direct appeal to the Supreme Court of Louisiana, as direct appeal is only allowed in Louisiana when a state statute is struck down under a constitutional challenge, appellant sought discretionary remedial writs of the Supreme Court of Louisiana. On May 12, 1976, appellant timely filed in the Supreme Court of Louisiana an application for writs of Certiorari and Review to review the judgment below and specifically ask the Supreme Court of Louisiana to review the constitutionality of Louisiana Act 151 of 1969 in light of the Equal Protection and Due Process Clauses of the Fourteenth Amendment to the United States Constitution. On June 9, 1976, the Supreme Court of Louisiana denied appellant's application for a writ of Certiorari or a writ of Review. The memorandum decision recorded at 332 So.2d 821 stated: "Writ denied; no merit in the assignment of errors." Two of the justices of the Supreme Court of Louisiana felt that the writs should be granted. One of the justices particularly felt that the "writs should be granted. *Turner v. Fouche*, 396 U.S. 346, 90 S.Ct. 532(1970) mandates relief for appellant." The Supreme Court of Louisiana is the highest court in the State of Louisiana.

SUBSTANTIALITY OF THE FEDERAL QUESTION

1. The underlying question presented to this court is an issue that has never been considered squarely by this court, yet the issue arises from a requirement that has on numerous occasions been struck down by this court—the requirement of ownership of property as a requisite to the exercise of some right or as a requisite to the fulfillment of a qualification for a position.

The question before this court, whether the ownership of "assessed property" as a requisite to an appointed position is a novel question and is of particular constitutional importance in order to safeguard the protections granted by the Equal Protection and Due Process Clauses of the Fourteenth Amendment to the United States Constitution as interpreted by a long line of decisions of the Supreme Court of the United States. If ownership of "assessed property" was allowed to stand as a constitutional element of classification, the door would be opened to undermine the protection afforded to all individuals, regardless of property ownership, by the Equal Protection and Due Process Clauses of the Fourteenth Amendment to the United States Constitution. This honorable court is therefore presented with a substantial and important federal question that should be heard in order to thwart possible future attempts to circumvent the decisions of this court recognizing and defining the protection granted by the Equal Protection and Due Process Clauses of the Fourteenth Amendment to the United States Constitution.

In *Turner v. Fouche*, 396 U.S. 346, 90 S.Ct. 532(1970), the United States Supreme Court struck down a statutory

scheme whereby only "freeholders" or immovable property or real property owners, could qualify for an appointed position as a member of a Georgia County Board of Education. The members of the County Board of Education were appointed by the County Grand Jury. In order to be eligible for such appointment, the person seeking appointment had to own immovable or real property within the county.

The Supreme Court, per Justice Stewart, struck the Georgia statute down on its face as being violative of the Equal Protection Clause of the Fourteenth Amendment. The court stated:

> ". . . the appellants and the members of their class do have a federal constitutional right to be considered for public service without the burden of invidiously discriminatory disqualifications. The State may not deny to some the privilege of holding public office that extends to others on the basis of distinctions that violate federal constitutional guarantees." Citing *Carrington v. Rash*, 380 U.S. 89, 91, 85 S.Ct. 775, 776, 13 L.Ed. 2d, 675; *Lassiter v. North Hampton County Board of Elections*, 360 U.S. 45, 50, 51, 79 S.Ct. 985, 989, 3 L.Ed. 2d, 1070; *Pope v. Williams*, 193 U.S. 621, 632, 24 S.Ct. 573, 575, 48 L.Ed. 817.

The court found it unnecessary to resort to the stricter equal protection test—"compelling state interest." The requirement the court held, whereby the right to hold this appointed public office is tied to the ownership of the immovable or real property:

> ". . . must fall even when measured by the traditional test for a denial of equal protection: whether the challenge classification rests on grounds wholly irrelevant to the achievement of a valid state objective."

Although the Supreme Court of the United States did not consider whether the ownership of "assessed property" was violative of the Equal Protection Clause of the Fourteenth Amendment in *Turner v. Fouche*, supra, the reasoning is equally applicable to a statutory scheme, as the one present before us, whereby only "freeholders" of "assessed property" could qualify for an appointed position. It is notable that in Louisiana real property is usually the only property appearing on the assessment rolls, although Louisiana Revised Statutes 47:1956-1957 do allow personal or movable property to appear on the assessment rolls if any individual desires to follow the detailed procedure. Such procedure is, however, practically speaking, seldom utilized.

Under the statutory scheme imposed by Act 151 of 1969, there is the possibility of someone owning a great amount of personal property or real property, yet owning no "assessed property." This person may have a great connection with the community despite the fact that none of his movable property is assessed. This particular appellant although owning no "assessed property," owned substantial amounts of "non-assessed" personal property and was an expert in the field of aviation.

Therefore, this honorable court should grant this appeal to determine whether the "assessed property" ownership—"non-assessed property" ownership classification is violative of the mandate of *Turner v. Fouche*, supra. Further, the appeal should be granted to see if the requirement of ownership of "assessed property" of Louisiana Act 151 of 1969 is somehow rationally related to the legislative objective in enacting that legislation. It is submitted that such classification of ownership of "assessed property" is invidious discrimination and

violative of the Equal Protection Clause of the Fourteenth Amendment as the ownership of "assessed property" in no rational way indicates a better qualified appointee to the Commission of The Baton Rouge Airport District.

2. Notwithstanding the decision of *Turner v. Fouche*, supra, it must be determined whether the provisions of Louisiana Act 151 of 1969, requiring ownership of property appearing on the assessment rolls as a qualification to membership on The Greater Baton Rouge Airport Commission are constitutional in light of the Equal Protection Clause of the Fourteenth Amendment.

This appellant submits that the right to hold this public office, even though an appointed office, is a fundamental right and must not be denied by the arbitrary classification between owners of property and non-owners of such property:

> "Any unjustified discrimination in determining who may participate in political affairs or in the selection of public officials undermine the legitimacy of representative government." *Kramer v. Union Free School District, No. 15*, 395 U.S. 621, 89 S.Ct. 1886, 23 L.Ed. 2d, 583.

This right to the public office of Commissioner, being a fundamental right, must be tested by the stricter test of the Equal Protection Clause, that is, the state must demonstrate a "compelling state interest" for requiring such a classification. As is readily apparent, there cannot be shown any "compelling state interest" for such arbitrary classification.

It is clear to this appellant that resort to the stricter test of the Equal Protection Clause is not really necessary for even under the traditional test of equal protection, that is, a

rational basis for such a classification, this statute is also constitutionally infirm.

> "In determining whether or not a state law violates the Equal Protection Clause, we must consider the facts and circumstances behind the law, the interests which the State claims to be protecting, and the interests of those who are disadvantaged by the classification." *Williams v. Rhodes*, 393 U.S. 23, 30, 89 S.Ct. 5, 10, 21 L.Ed. 2d, 24 (1968).

> "Although at times variously phrased, the traditional test of a statute validity under the Equal Protection Clause is a familiar one: A legislative classification is invalid only 'if it rest(s) on ground wholly irrelevant to achievement of the regulation objective.'" *Kramer v. Union Free School District, No. 15*, 395 U.S. 621, 89 S.Ct. 1886, 23 L.Ed. 2d, 583, citing *Kotch v. Board of River Port Pilot Commission*, 330 U.S. 552, 556, 67 S.Ct. 910, 912, 91 L.Ed. 1093.

See also *McGowan v. Maryland*, 336 U.S. 420, 81 S.Ct. 1101, 6 L.Ed. 2d, 393 where it was stated:

> "The constitutional safeguard is offended only if a classification rests on grounds wholly irrelevant to the State's objective."

The United States Supreme Court has been very reluctant to uphold the rationality and thus the validity of classification between property owners and non-owners of property in light of an equal protection challenge. In four recent cases, the United States Supreme Court has struck down classifications that distinguish between property owners and non-owners of property, as denying the equal protection of the laws as guaranteed by the Fourteenth Amendment of the United

States Constitution. *Kramer v. Union Free School District*, supra, *Cipriano v. City of Houma*, 395 U.S. 701, 89 S.Ct. 1897, (1969), *City of Phoenix, Arizona v. Kolodziejski*, 399 U.S. 204, 90 S.Ct. 1990, (1970), *Turner v. Fouche*, supra.

Although three of these cases involved the denial of the franchise to otherwise qualified electors, simply because such electors did not own real property, all of these decisions indicate that the highest court of our country does not favor classification which denies certain rights and privileges to persons because such persons lack ownership of property.

In *City of Phoenix, Arizona v. Kolodziejski*, supra, there was involved a challenge to the Arizona Constitution and statutes that exclude non-property owners from voting in elections to improve issuance of general obligation bonds. The United States Supreme Court seemed to indicate that there was an apparent rationally related basis for restricting the vote to real property owners, but yet still struck down such a classification as a denial of equal protection of the laws.

In language equally applicable here, the United States Supreme Court stated:

> "We thus conclude that, although owners of real property have interest somewhat different from the interest of non-property owners in the issuance of general obligation bonds, there is no basis for concluding that non-property owners are substantially less interested in the issuance of these securities than are property owners."

Therefore, the United States Supreme Court, though indicating that there was some reasonably rational basis for such classification, nevertheless struck down this classification as a denial of equal protection. Here, there is present

more compelling reasons to strike down the classification imposed by the Louisiana Legislature in Louisiana Act 151 of 1969, as there is lacking in this act any rationally related basis for such classification to meet the desired state interest to have qualified members serve on The Greater Baton Rouge Airport Commission. Ownership of property, much less ownership of property appearing on the assessment rolls of the Parish of East Baton Rouge, is in no way related to the qualifications necessary to perform the job imposed upon a member of The Greater Baton Rouge Airport Commission.

In addition, Louisiana Act 151 of 1969 is a flagrant violation of the Due Process Clause of the United States Constitution. When a state exercises its power in the adoption of any law, there is the requirement that in the exercise of its power, a state must adopt a measure that is rational and reasonable in light of the power which that state has a right to exercise. That is, the state, in adopting the requirement of ownership of "assessed property" in order to qualify to the Airport Commission, must demonstrate a rational connection between such requirement and its right to establish an Airport Commission, in order to satisfy the Due Process Clause of the United States Constitution. Here, there is a lack of any rational foundation for the requirement of the ownership of "assessed property" in order to qualify for membership on the Airport Commission. The fact that a person owns "assessed property" in the parish is no way indicative of the manner in which he will conduct anticipated goals of the state —to establish an airport that will meet the needs of the area and community. In the words of Justice Stewart in *Turner v. Fouche*, supra, "It seems impossible to discern any interest the qualification can serve." Thus Louisiana Act 151 of 1969 is not only a violation of the Equal Protection Clause, but

likewise is a violation of the Due Process Clause of the United States Constitution.

3. Although this honorable court has never passed upon the issue of whether the right to hold public office is a fundamental right within the "compelling state interest" test of the Equal Protection Clauses, that issue is herein presented. The holding of a public office, whether elected or appointed, is the cornerstone of our democratic type of government. There can be no more fundamental right than the right that is fundamental to the continuation of our form of government —the right of all persons, regardless of property ownership, to seek and attain any public office in our governmental structure.

CONCLUSION

This honorable court should grant this appeal not only to give the appellant the protection against an irrational classification, but to perpetuate and extend the interpretation given to the Equal Protection and Due Process Clauses of the Fourteenth Amendment to the United States Constitution; and not allow the "assessed property" criterion to cut off fundamental rights or to circumvent the United States Supreme Court's holding of invidious discrimination when ownership of real property is involved. The questions presented by this appeal are substantial and of public importance. The case is one of first impression. It is respectfully submitted that probable jurisdiction should be noted.

Respectfully submitted

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PROOF OF SERVICE

I, Herschel C. Adcock, one of the Attorneys for E. C. Chappelle, Jr., Appellant herein, and a member of the Bar of the Supreme Court of the United States, do hereby certify that on the ..... day of September, 1976, I served a copy of the foregoing jurisdictional statement, and its appendices, on The Greater Baton Rouge Airport District, et al, Appellees, in connection with this appeal, by delivering the same to their counsel of records, Mr. Edward V. Fetzer, Assistant Parish Attorney, at his office in the Municipal Building, Baton Rouge, Louisiana, and upon Mr. William J. Guste, Jr., Attorney General for the State of Louisiana.

HERSCHEL C. ADCOCK,
Attorney for the Appellant

APPENDIX A

E C. CHAPPELLE, JR.,

Appellant,

versus

THE GREATER BATON ROUGE
AIRPORT DISTRICT, ET AL,

Appellees.

19TH JUDICIAL DISTRICT COURT
PARISH OF EAST BATON ROUGE
STATE OF LOUISIANA
NUMBER 179,759 "J"

FIRST CIRCUIT COURT OF APPEAL
NUMBER 10,621

SUPREME COURT OF LOUISIANA
NUMBER 58,025

NOTICE OF APPEAL TO THE SUPREME COURT OF THE UNITED STATES

Notice is hereby given that E. C. Chappelle, Jr., the appellant above named, hereby appeals to the Supreme Court of the United States from the final judgment of the First Circuit Court of Appeal for the State of Louisiana, rendered on March 1, 1976, affirming the judgment of the Nineteenth Judicial District Court for the Parish of East Baton Rouge,

State of Louisiana. The Supreme Court of Louisiana denied writs of Certiorari and Review in this matter on June 9, 1976.

This appeal is taken pursuant to 28 U.S.C. Sec. 1257(2).

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APPENDIX B

STATUTES INVOLVED

1. Louisiana Act 151 of 1969 at Section 3, the pertinent portion thereof states:

> "Subject to the provisions of Section 5 hereof, there is hereby further created and established a 'Board of Commissioners' (hereinafter called 'Commission') composed of nine (9) members from East Baton Rouge Parish appointed by Authority, and with terms of office designated by Authority. Such appointees shall be qualified electors in and owning property assessed in East Baton Rouge Parish and may be members of the City Council of the City of Baton Rouge or the Parish Council of the Parish of East Baton Rouge. The members of the Airport Commission of the Parish appointed and qualified as of the effective date of this act shall constitute the initial members of Commission."

Section 5 of that act contains no limitations that are pertinent to the matter before this Court.

2. East Baton Rouge Parish Council Resolution Number 8645 at Section 2, the pertinent portion thereof states:

> "SECTION 2. Creation of District. That there is hereby created pursuant to the authority of Article 14, Section 14(d.2) and Act 151 of 1969, an Airport District entitled 'Greater Baton Rouge Airport District,' said District to be composed of the whole of the Parish of East Baton Rouge and to constitute a subdivision of the State of Louisiana within the meaning of Article 10, Section 10, and Article 14, Section 14 of the Constitution of Louisiana. The governing authority of the Airport District shall consist of (i) an Airport Authority; and (ii) a Board of Commissioners, as provided hereinafter and as is provided for in Act 151 of 1969. 'Airport Authority,' subject to the requirements of Section 5 of Act 151 of 1969, consists of the Mayor and Parish Council of the Parish of East Baton Rouge and shall be known and

> herein referred to as 'Authority.' The officers of the Parish Council and the Parish under the Plan of Government shall be the officers of the Authority. The Board of Commissioners shall be known as 'Board of Commissioners of Greater Baton Rouge Airport District' and is hereinafter referred to as 'Commission.' "

3. Louisiana Revised Statutes 47:1956-1957 states:

> **"§1956. Preparation, distribution, and return of blank forms for listing and assessing of property**
>
> "The tax commission may require the assessors to make up assessment lists in a formal manner and according to a method to be prescribed by it. In such assessment lists it may require the separate valuations of improved and unimproved property and the improvements thereon. The tax commission shall, before the first day of January of each year, prepare and have printed the blank forms prescribed for the listing and assessing of property, the parish of Orleans excepted. The tax commission shall furnish to each assessor throughout the state such quantity of such printed forms as will suffice to secure the listing of all property subject to taxation. In the parish of Orleans, the tax commission shall furnish such forms as may be requested by the board of assessors and approved by the tax commission.
>
> "Each taxpayer, the parish of Orleans excepted, shall fill out a list of his property and make oath to its correctness, in the manner and form prescribed by law and return such list to the assessor on or before the first day of April of each year. In the parish of Orleans, each taxpayer shall return a list of his property, duly sworn to, within twenty days after the form for such purpose shall have been left at his domicile or place of business. Each tax assessor, in person or by a duly qualified deputy, is authorized to administer oaths or affirmations in the manner required by law for administering oaths. Any wilful mis-statement to the assessor, or any authorized deputy, made under oath, shall be considered and punished as false swearing, as provided by the laws of this state in other cases. As amended Acts 1952, No. 71, § 1.

"§1957. **Listing and assessing of property generally**

"All taxable property in the state shall be assessed by the tax commission. The assessors shall be responsible, under the supervision of the tax commission, for listing and assessing all property within their respective parishes, except such property as is subject to direct assessment by the tax commission.

"All property subject to taxation shall be listed and assessed at actual cash value and the actual cash value of all property fixed by the tax commission shall be the actual cash value for all purposes.

"The assessor, in person or by deputy, shall have the right and power to require of any property holder an inspection of his books and accounts, and shall have the right to examine them in full, and may, from such books and accounts, make an estimate of the value of the property to be assessed. In order to have accessible information regarding the business of nonresidents, all books and papers pertaining to the business transacted in Louisiana shall be kept within the state. The assessor shall also, if necessary, put upon oath the owner, agent, or employees of the owner, and propound to him or them such questions as will elicit from him or them the actual cash value of the property. The assessor may inquire into the insured value of all property, or into the value at which it had been insured previously, and consider the insured value in listing the property for taxation. The tax assessor shall value each item of property as he considers just, whenever he does not agree with the valuation as fixed by the taxpayer.

"If any person fails or refuses to submit a list of his property and make oath to its correctness, the assessor shall himself make out a list from the best information he can obtain and shall make his own valuations thereon. To that end, he is authorized to administer oaths and propound questions to any person whom he supposes can give information in relation thereto. Any wilful misstatement to the assessor, or any authorized deputy, made under oath, shall be considered and punished as false swearing as provided by the laws of this state in other cases.

"If the assessors, except in the parish of Orleans, find or have reason to believe that the list of taxable property furnished by any person is incomplete or incorrect, they shall add thereto a supplemental list containing a description and valuation of all the property which has been omitted or incorrectly described by the person signing the list; provided, no change in any list of property rendered shall be made until the taxpayers be notified to appear within ten days and show cause why such change should not be made.

"The assessors throughout the state shall ascertain in so far as practicable whether the persons whose property is assessed by them and whose names figure on their assessment rolls are white or colored, and note such fact in their return, and make mention thereof after each name figuring on the assessment rolls.

"If any tax assessor intentionally or knowingly or through gross negligence omits any taxable property from the assessment list, or permits it to be omitted therefrom, he and his sureties in solido shall be liable on his official bond for the full amount of the taxes due on the property so omitted from the list, together with ten per centum (10%) per annum interest thereon from the due date of the taxes, ten per centum (10%) attorneys' fees on the amount of the judgment recovered against him, and all costs of the suit.

"The tax commission shall publicly reprimand any assessor if it shall appear that he is wilfully negligent or unfair in the assessment of property, or in omitting it from the rolls, and if the tax commission deem it necessary, shall institute removal proceedings through the Attorney General, for gross misconduct in office.

"If any tax assessor or deputy signs a jurat without having actually administered the oath, he shall be guilty of nonfeasance and malfeasance in office, and the tax assessor shall be liable on his bond for all the taxes due by person purporting to have taken the oath or affirmation, and shall forfeit all his commissions and shall be at once removed from office by the governor."

APPENDIX C

Judgment and Written Reasons for Judgment of the 19th Judicial District Court for the Parish of East Baton Rouge, State of Louisiana

---

SUIT NO. 179,759, DIVISION J
19TH JUDICIAL DISTRICT COURT
PARISH OF EAST BATON ROUGE
STATE OF LOUISIANA

E. C. CHAPPELLE, JR.

versus

THE GREATER BATON ROUGE AIRPORT DISTRICT, ET AL

WRITTEN REASONS FOR JUDGMENT

Plaintiff has filed this suit seeking an injunction prohibiting defendants from removing him from his position as a member of the Greater Baton Rouge Airport Commission. Plaintiff's request for a preliminary injunction was denied and plaintiff was thereafter removed from this position. Plaintiff has amended his petition and now seeks a declaratory judgment concerning his qualifications to hold the position on the Airport Commission and alternatively seeking to be reinstated into his position as Executive Director and Secretary of the Greater Baton Rouge Airport Commission.

The facts are essentially as follows: Plaintiff for a period of five years occupied his position of Executive Director and Secretary of the Greater Baton Rouge Airport Commission. On May 13, 1974, plaintiff resigned this position and was appointed to a position on the Greater Baton Rouge Airport Commission. Plaintiff's position on the Airport Commission has been declared vacant by the Parish Clerk, Rosemary Broussard, based on a legal opinion rendered by Parish Attorney, Joseph F. Keogh, stating that plaintiff is not qualified to serve as a member of the Commission, because at the time of his appointment, plaintiff owned no property assessed in East Baton Rouge Parish. Pursuant to this legal opinion and declaration by Mrs. Broussard, plaintiff on March 4, 1975, at the Commission meeting was denied his position as a member of the Airport Commission.

Basically plaintiff contends that he meets the qualifications for the position on the Airport Commission; that if he does not meet the qualifications, then the property requirements deny him equal protection and due process of law and, thus, are unconstitutional as violative of the Equal Protection and Due Process Clauses of the Fourteenth Amendment to the United States Constitution; and alternatively that he is entitled to be reinstated to his former position as Executive Director and Secretary of the Greater Baton Rouge Airport District.

Act 151 of 1969 requires the ownership of "property assessed in East Baton Rouge Parish" in order for the person to serve on the Airport Commission.

The foremost question presented is: What does the word "property" mean in Act 151 of 1969 after considering its "most usual signification"? Our Legislature, in enacting that act, placed no limitation or meaning on the word "property" nor did it set forth any guidelines so as to determine the meaning of that word. Therefore, outside sources must be

consulted, in light of the legislative intent, to decide the meaning of that word.

73 Corpus Juris Secundum, Property, Section 1, Page 137, sets forth the meaning of the term "property" when used generally in a statute:

> "• • • Generally, as used in statutes, the term 'property' should be given its ordinary meaning • • •.
>
> "The word 'property' includes both real and personal property, and ordinarily will be construed as meaning both real and personal property, • • •."

The Louisiana Legislature in enacting the Louisiana Code of Civil Procedure Article 5251 (13) has given effect to the abovementioned broad interpretation of the mere word "property." This article states that:

> "(13) 'Property' includes all classes of property recognized under the laws of this state: movable or immovable, corporeal or incorporeal."

Likewise, in support of this unrestricted interpretation, the Louisiana Supreme Court in interpreting a taxing statute said in *Kansas City Life Insurance Company v. Hammett*, 177 La. 930, 149 So. 525, 526 (1933):

> "The term 'property' is sufficiently comprehensive to include every species of estate, real and personal, and everything which one person can own and transfer to another. It extends to every species of right and interest capable of being enjoyed as such upon which it is practical to place a money value."

The Louisiana Supreme Court then continued:

> "The word 'property' as that term is used in the statutes relating to assessment and taxation, refers to every species of valuable right or interest which is subject to ownership, or that which has an exchangeable value or which goes to make up one's wealth or estate;

> all things which have a pecuniary value. 'Property' says Webster, 'in a broad sense, is any valuable right or interest considered primarily as a source or element of wealth.' "

Since the word "property" is not qualified as to whether it must be real or movable property, the Court is of the opinion that "property" as used in the statute includes both real and movable property, with the only qualification being that the property (real or movable) must be "assessed in East Baton Rouge Parish."

It is the Court's opinion that plaintiff has failed to prove that at the time of his appointment, he owned any property assessed in the Parish. The introduction into evidence of a pink slip showing that sales tax had been paid by Mr. Chappelle on a Porsche automobile does not satisfy the requirement of assessment as set out in the act. It is interesting to the Court that Mr. Chappelle was given an opportunity to present any evidence of the ownership of "assessed property" owned on May 8, 1974. This was done by Mrs. Rosemary Broussard, Parish Clerk, in her letter of February 20, 1975, to plaintiff (P-7).

The Court is now faced with the question of whether the subsequent purchase of real property assessed in the Parish (prior to the time of his removal) cured the infirmity that previously existed with respect to his qualifications to hold the office. The Court believes not. The qualifications for the office are determined at the time of the appointment, May 8, 1974, not February 7, 1975, the date of the purchase of real property in the Parish of East Baton Rouge.

We come now to the question of whether or not the requirement that plaintiff own property assessed in the Parish (either real or movable) is constitutional.

Plaintiff contends basically that any property requirement is violative of his rights under the Fourteenth Amend-

ment of the United States Constitution in that it denies him equal protection of the law and due process of law.

Any law which discriminates between citizens must be judged according to the **right involved** and the **basis for the discrimination**.

If the **right involved** is a **fundamental right**, then the government must show that there is a "compelling state interest" for the discrimination. It does not appear that there is a compelling state interest in requiring Airport Commissioners to be property owners. Thus, if the right to hold appointed office is a **fundamental right,** the property ownership requirement is unconstitutional as a denial of equal protection of the law in violation of the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution.

United States Supreme Court cases say that among the fundamental rights are marriage [*Loving v. Virginia*, 88 U.S. 1], procreation [*Skinner v. Oklahoma*, 316 U.S. 535], and contraception [*Eisenstadlt v. Baird*, 405 U.S. 428]. The right to vote is a fundamental right [*Dunn v. Blumstein*, 405 U.S. 330]. The right to have one's vote weighed equally with others is a fundamental right [*Reynolds v. Sims*, 377 U.S. 533]. The right to travel interstate is fundamental [*Shapiro v. Thompson*, 394 U.S. 619] as are First Amendment rights [*Police Department of City of Chicago v. Mosley*, 408 U.S. 92].

If there is no authority for a fundamental right, it must be seen whether the right is based on basic values that underlie our society.

The Court does not believe that the right to hold an appointive office is a fundamental right. If the right involved is **not** a fundamental right, then plaintiff must prove that there is **no rational basis** for the distinction between citizens drawn by the statute. It appears that there is a rational basis for

requiring Airport Commissioners to be property owners. This insures that the persons on the Airport Commission are affected by their decisions and concerned and connected with the area they represent.

In support of his contention that the property requirement is unconstitutional, plaintiff has cited the cases of *Kramer v. Union Free School District No. 15*, 394, U.S. 621, 89 Supreme Court 1886 (1969); *Cipriano v. City of Houma*, 395 U.S. 701, 89 Supreme Court 1897 (1969); and *City of Phoenix, Arizona v. Kolodziejski*, 399 U.S. 204, 90 Supreme Court 1990 (1970). These cases involved the denial of the franchise to otherwise qualified electors, simply because they did not own real property. The Court is of the opinion that these cases are distinguishable from the instant case because the right to vote is a fundamental right, whereas, the Court does not believe that the right to hold an appointive office is a fundamental right. It is, therefore, the Court's opinion that the property ownership qualification of Act 151 of 1969 is not unconstitutional.

Finally it must be determined whether or not plaintiff is entitled to rescind the agreement he made to step down as Executive Director and Secretary of the Greater Baton Rouge Airport District in exchange for an appointment to the Greater Baton Rouge Airport Commission. The Court is of the opinion that plaintiff is not so entitled.

Plaintiff contends that he entered into a contract of exchange between himself and the Airport Authority whereby he gave up one job in return for an appointment to the Airport Commission. While it is apparent to the Court that there were a great deal of political negotiations involved, the Court does not believe that the Authority acting as a governmental body ever bound itself to such an exchange agreement. Plaintiff's testimony indicates that his agreement was made by long distance telephone call with Councilman Currier. The letter of resignation submitted by Mr. Chappelle (D-4) con-

tained no reservations, qualifications, or limitations on his resignation. The letter addressed to Mr. Joseph F. Keogh, the City-Parish Attorney, reads as follows:

"I hereby submit my resignation as Executive Director and Secretary of the Greater Baton Rouge Airport District."

The Court further notes that the minutes of the Greater Baton Rouge Airport Authority (D-1) merely accept plaintiff's resignation and at the same time appoint him to the position on the Airport Commission. No correlation, limitation, or other connection is drawn between the two acts so as to evidence an intent to enter into a contract of exchange in relation to the two positions.

The Court refuses to believe that the City Council was guilty of any fraud or artifice because they knew that plaintiff lacked the necessary qualifications for appointment to the Commission. There was not one scintilla of evidence, other than the testimony of the plaintiff, in regard to any "deal" regarding the job swap. It is incumbent upon the plaintiff to prove the facts underlying any such arrangement. On the basis of the evidence presented on the trial of the case, the Court is of the opinion that plaintiff has fallen far short of showing that the City Council entered into any contract of exchange with him. The Court is of the opinion that the negotiations between the parties were of a political nature and not of a contractual nature. The Court is, therefore, of the opinion that the negotiations between the parties did not amount to a contract of exchange as contemplated in LSA-C.C. 2660, et seq. Accordingly, the Court does not believe that under the mandate of LSA-C.C. 2663 plaintiff is entitled to be returned to his position as Executive Director and Secretary of the Greater Baton Rouge Airport District.

Defendants have requested their attorney's fees in this matter. This point was not argued and no evidence was presented which showed a statutory or contractual basis on the

claim for attorney's fees. Therefore, the Court is of the opinion that the claim for attorney's fees is without merit.

For the above and foregoing reasons, the Court is of the opinion that defendants are entitled to judgment in their favor and against plaintiff, E. C. Chappelle, Jr., dismissing plaintiff's suit. Defendants' request for attorney's fees is denied. All costs of this proceeding are to be borne by plaintiff.

Judgment will be signed accordingly.

Baton Rouge, Louisiana, this 23rd day of July, 1975.

s/ STEVE A. ALFORD, JR.
Judge

NUMBER 179,759, DIVISION "J"
19TH JUDICIAL DISTRICT COURT
PARISH OF EAST BATON ROUGE
STATE OF LOUISIANA

E. C. CHAPPELLE, JR.

versus

THE GREATER BATON ROUGE
AIRPORT DISTRICT, ET AL

JUDGMENT

This cause came on the 22nd day of July, 1975, for hearing pursuant to the previous orders of this court. Present:

Herschel C. Adcock, attorney for E. C. Chappelle, Jr., and Edward J. Fetzer, attorney for the defendants.

After hearing the pleadings, testimony and oral arguments,

IT IS ORDERED that judgment is rendered herein in favor of defendants, Woodrow W. Dumas; William J. Guste, Jr.; and William S. Day, Jr., Jewel J. Newman, Earl Harrison, George R. Dabbs, Michael G. Roubique, Edgar L. Watts, Jr., Stanley J. Gross, Johnny H. Dykes, William T. Winfield, Joseph A. Delpit, Tommy Neck, and Dr. C. P. Currier in their capacity as members of The Greater Baton Rouge Airport District, The Greater Baton Rouge Airport Authority and The City Council, dismissing plaintiff's suit at his cost.

JUDGMENT FURTHER RENDERED in favor of plaintiff and against defendants denying defendants' request for attorney's fees.

JUDGMENT RENDERED on the 23rd day of July, 1975.

JUDGMENT READ AND SIGNED in Open Court on this 28th day of July, 1975.

s/ STEVE A. ALFORD, JR.
Judge, 19th Judicial District Court

APPENDIX D

Judgment, Opinion and Refusal of Application for Rehearing of the Court of Appeal, First Circuit, State of Louisiana

---

STATE OF LOUISIANA
COURT OF APPEAL
FIRST CIRCUIT
NUMBER 10,621

E. C. CHAPPELLE, JR.

versus

THE GREATER BATON ROUGE AIRPORT DISTRICT, ET AL

APPEAL FROM THE NINETEENTH JUDICIAL DISTRICT COURT, PARISH OF EAST BATON ROUGE, HON. STEVE A. ALFORD, JUDGE, PRESIDING

Before Sartain, Edwards, and Bennett
Edwards, J.

Plaintiff-appellant sued to enjoin defendant-appellees from removing him from his position as member of the Greater Baton Rouge Airport Commission. When the preliminary injunction was denied, appellant was removed from the Commission. Appellant amended his petition and sought a declaratory judgment relative to his qualifications to hold the position on the Commission and alternatively asked to be reinstated to his former position of Executive Director and Secre-

tary of the Greater Baton Rouge Airport District (District). The trial court rendered judgment in favor of defendants and against plaintiff, dismissing his suit. From this ruling plaintiff now appeals.

There are three issues before us:

1. Did appellant fulfill the requirement of Act 151 of 1969 that appointees to the Commission must own "property assessed in East Baton Rouge Parish?"

2. If not, is that requirement violative of appellant's rights under the Fourteenth Amendment to the United States Constitution guaranteeing equal protection of the laws?

3. Was a contract of exchange effectuated between appellant and appellees whereby appellant was to give up his position as Director of the District in return for his appointment to the Commission, and did his removal from the Commission constitute a breach thereof warranting in law the relief of reinstatement to his former position?

FACTS

The facts as found by the trial court and as reflected by the record are not in dispute. Appellant served as Director of the District for a period of some five years until his resignation on May 13, 1974. Prior to this date, appellant had experienced increasing unspecified harassment in his capacity as Director. As a compromise gesture, he then proposed to Dr. C. O. Currier, member of the City-Parish Council, the appointing authority for the Commission, that he, appellant, would resign his position as Director in exchange for his being appointed to the Commission. On May 13, 1974 the appellant resigned as Director and was appointed to the Commission. Subsequently, the Parish Clerk declared appellant's position on the Commission vacant. The basis for this action

was a legal opinion of the Parish Attorney stating that appellant was not qualified to serve as a member of the Commission because at the time of his appointment he owned no property assessed in East Baton Rouge Parish. This suit followed.

(1) "Property assessed" under Act 151 of 1969

Act 151 of 1969 requires that an appointee to the Commission own "property assessed in East Baton Rouge Parish." At the trial, appellant introduced evidence that he had paid sales tax on an automobile that he purchased prior to his appointment in 1974. He also introduced evidence of a purchase of a piece of immovable property located in East Baton Rouge Parish on February 7, 1975.

Initially, we agree with the trial court's determination that the purchase on February 7, 1975, several months after the appointment, is irrelevant to the determination of appellant's qualifications for the appointment. Qualifications for appointive office are determined at the time of the appointment.

The question remains whether the ownership of and the payment of sales tax on the purchase of the automobile satisfy the requirement of "property assessed."

The appellant contended and the trial court agreed that the term "property" should include movables as well as immovables. Where, as here, there are no limitations placed on the term within the particular statute in question, both the legislation and jurisprudence support such a broad, unrestricted interpretation. *See La. Civ. Code* art. 14; *La. Code Civ. P.* art. 5251 (13); *Kansas City Life Ins. Co. v. Hammett*, 177 La. 930, 149 So. 525 (1933); 73 C.J.S. *Property* Section 1.

The further qualification contained in the Act is that the property be "assessed in East Baton Rouge Parish."

Appellant argues that (1) property does not have to appear on the assessment rolls to be assessed and (2) the payment of a sales tax constitutes an assessment of that property. Pretermitting for the moment appellant's initial contention, we cannot accept the argument that the payment of sales tax constitutes an assessment. Black's Law Dictionary 150 (rev. 4th ed. 1968) makes clear the distinction between the two. "Assessment" is:

> "The listing and valuation of property for the purpose of apportioning a tax upon it, either according to value alone or in proportion to benefit received. Also determining the share of a tax to be paid by each of many persons; or apportioning the entire tax to be levied among the different taxable persons, establishing the proportion due from each. . . . It fixes the liability of the taxpayer and ascertains the facts and furnishes the data for the proper preparation of the tax rolls. . .
>
> " 'Assessment' and 'levy' are frequently used interchangeably. . . Though properly speaking it does not include the levy of taxes. . . Assessment is also popularly used as synonym for taxation in general, the authorative imposition of a rate or duty to be paid, but in its technical signification it is only taxation for a special purpose or local improvement, local taxation as distinguished from general taxation; taxation on principle of apportionment according to the relation between burden and benefit; whole taxes are impositions for purpose of general revenue. . .
>
> "An assessment is doubtless a tax, but the term implies something more; it implies a tax of a particular kind, predicated upon the principle of equivalents, or benefits, which are peculiar to the persons or property charged therewith, and which are said to be assessed or appraised, according to the measure or proportion of such equivalents; whereas a simple tax is imposed for the purpose of supporting the government generally, without reference to any special advantage which may be supposed to accrue to the persons taxed. Taxes must be levied, without discrimination, equally upon all the subjects of property; whilst assessments are only levied upon lands, or some other specific property, the subjects of the supposed benefits: to repay which the assessment is levied. . ."

So defined, the payment of a sales tax does not constitute an assessment.

Although, as appellant contends, the appearance of property on the assessment rolls may not be the exclusive proof of assessment, such listing is indeed competent evidence, and such that the legislature might choose to rely upon for determining assessment and ownership of property assessed.

(2) Constitutionality of Act 151 of 1969

Does the requirement of Act 151 of 1969 that appointees own property assessed in East Baton Rouge Parish violate appellant's right to equal protection of the law?

When a legislative classification is challenged, as here, on Fourteenth Amendment equal protection grounds, one of two tests may be applied to determine the validity of the statute. The "compelling state interest" test is applied when there is involved a "fundamental" right, such as the right to vote or to marry whomever one chooses, or when there is employed a "suspect" criterion, such as race or sex. In all other cases traditional equal protection standards apply. Appellant cites, and this court has found, no cases holding that the right to be considered for appointive public office is a fundamental right. Therefore, we will test the classification herein by traditional standards of equal protection.

Traditional standards of equal protection have been long established. In *McGowan v. Maryland*, 366 U.S. 420, 81 S. Ct. 1101 (1961), the Court summarized the rule:

> "The constitutional safeguard (equal protection) is offended only if the classification rests on grounds wholly

> irrelevant to the achievement of the State's objective. State Legislatures are presumed to have acted within their constitutional power despite the fact that, in practice, their laws result in some inequality. A statutory discrimination will not be set aside if any state of facts reasonably may be conceived to justify it."
>
> 81 S. Ct. at 1105

In enacting Act 151 of 1969, the legislature sought to insure that the members of the commission would have a substantial interest in performing their duties effectively and conscientiously. The legislature could have concluded reasonably that property owners of East Baton Rouge Parish would have that interest. To effectuate this objective, the legislature chose as its criterion for appointment to the Commission, the ownership of "property assessed in East Baton Rouge Parish." The fact that the determination of property ownership could have been made otherwise in no way militates against the validity of the choice made. In the achievement of a valid legislative objective, there is no requirement under traditional equal protection standards that the legislature choose the best method available, but only that there be a rational basis for the means chosen.

La. R.S. 47:1956-1957 require every owner of property, movable and immovable, to submit to the Parish Assessor a list of that property. The legislature could have chosen to utilize this requirement as a simple method of determining property ownership for the purposes of eligibility for appointment to the Commission under Act 151 of 1969. Such a scheme is not irrational.

Appellant contends that the payment of sales tax on the purchase of an automobile should suffice to qualify him under the Act. There is no doubt that the payment of such a tax is evidence of ownership of property, at least at the time of purchase. However, it does not constitute an assessment of his property, as indicated *supra*. At issue is the rationality

vel non of the legislative scheme employed. The legislature chose to make assessment, rather than payment of sales tax, the criterion of ownership. We are not concerned with the relative merits of the possible schemes; the one chosen is rationally related to a valid legislative objective and is therefore constitutional.

Appellant cites *Turner v. Fouche*, 396 U.S. 346, 90 S. Ct. 532 (1970) as mandating that we hold Act 151 of 1969 unconstitutional. In *Turner*, the Court found a Georgia statutory requirement of ownership of immovable property for appointment to a county board of education to deny equal protection of the laws under the traditional test. However, considering our increasing population and diminishing availability of land, there are many good citizens who own no immovable property but who do own movable property in varying amounts. Therefore, a classification like that of the Georgia statute which eliminates those who own no immovable or real property from consideration for public office is far more invidious than one like ours which bars only those who own no property at all. With this in mind, we note the Court's closing remarks in *Turner, supra.*:

> **Without excluding the possibility that other circumstances might present themselves in which a property qualification for office-holding could survive constitutional scrutiny**, we cannot say, on the record before us, that the present free-holder requirement for membership on the county board of education amounts to anything more than invidious discrimination. (emphasis added).
>
> 90 S. Ct. at 542

We therefore hold the legislative scheme employed under Act 151 of 1969 *prima facie* constitutional. There has been no allegation that the assessment practices **as applied** in this case are unconstitutional, nor has there been any evidence adduced on this issue. We cannot take judicial notice of the assessment practices of the assessor of East Baton Rouge Parish, *La.* R. S. 15:422. We therefore do not pass on the issue

of the constitutionality of the **application** of the legislative scheme.

3. **Exchange**

Appellant testified at the trial concerning his proposal to Dr. Currier and of the understanding that he, appellant, had that an agreement was made to "exchange" his position as Director for a position on the Commission. Because he was later ousted from the Commission, appellant now invokes *La. Civ. Code* art. 2663[1] for relief in the form of reinstatement as Director.

Appellant is not in a position to avail himself of the provisions of this article.

La. Civ. Code art. 2660 defines exchange as a contract whereby the parties give to one another one thing for another. *La. Civ. Code* arts. 2660-2667 (Of Exchange) are found in Book III of the Civil Code—"Of The Different Modes Of Acquiring The Ownership Of Things." The last, Article 2667, states that, except for the differences found in the preceding seven articles, all the provisions relative to sales apply to exchange. Chapter 3 of Title VII (Of Sale) is titled "Of Things Which May Be Sold." "Effects of commerce" (Article 2448); "the rights, titles and interests to an inheritance" (Article 2449); "an uncertain hope . . . as the fisher sells a haul of his net before he throws it" (Article 2451)—all are illustrative of the various things which may be sold or exchanged. However, implicit in every sale or exchange is **ownership**, acquired and divested. A public official does not own the public office he holds; he cannot barter or sell his office as an effect of commerce, an inheritance right, an uncertain hope, or as anything else. He is elected or appointed to a position of fidelity to the public trust.

[1] The exchanger, who is evicted by a judgment of the thing he has received in exchange, has his choice either to sue for damages or for the thing he gave in exchange.

There is no merit in, and this court will not consider, applying the codal provisions of our private law of exchange to a political controversy involving the attempted barter of public office.

The decision of the trial court is affirmed at appellant's cost.

AFFIRMED.

COURT OF APPEAL, FIRST CIRCUIT,
STATE OF LOUISIANA

No. 10,621

PARISH OF EAST BATON ROUGE

E. C. CHAPPELLE, JR.

versus

THE GREATER BATON ROUGE
AIRPORT DISTRICT, ET AL

On application for rehearing.

Rehearing refused.

Baton Rouge, Louisiana, April 12, 1976.

s/ C. Lenton Sartain

s/ Wallace A. Edwards
Judges

APPENDIX E

Refusal of the Supreme Court of Louisiana to Grant Writ of Certiorari or Writ of Review, Memorandum Decision

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SUPREME COURT OF LOUISIANA
New Orleans, 70112
June 9, 1976

No. 58,025

E. C. CHAPPELLE, JR.

versus

THE GREATER BATON ROUGE AIRPORT DISTRICT, ET AL

In re: E. C. Chappelle, Jr., applying for Certiorari, or writ of review, to the Court of Appeal, First Circuit, Parish of East Baton Rouge.

Writ denied; no merit in the assignment of errors.

s/ WFM

s/ JWS

s/ FWS

s/ AT, Jr.

DIXON, J., is of the opinion the writ should be granted.

CALOGERO, J., is of the opinion the writ should be granted. Turner v. Fouche, 396 U.S. 346, 90 S.Ct. 532 (1970) mandates relief for applicant.

FILED
FEB 24 1977
MICHAEL RODAK, JR., CLERK

IN THE

SUPREME COURT OF THE UNITED STATES

April Term, 1977

No. 76-352

E. C. CHAPPELLE, JR.,

Appellant,

versus

THE GREATER BATON ROUGE AIRPORT DISTRICT, ET AL.,

Appellees.

On Appeal from the Supreme Court for the State of Louisiana

Filed September 7, 1976

Probable Jurisdiction Noted

January 10, 1977

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NUMBER 179,759, DIVISION "J"
19TH JUDICIAL DISTRICT COURT
PARISH OF EAST BATON ROUGE
STATE OF LOUISIANA

E. C. CHAPPELLE, JR.

versus

THE GREATER BATON ROUGE
AIRPORT DISTRICT, ET AL

WRITTEN REASONS FOR JUDGMENT

Plaintiff has filed this suit seeking an injunction prohibiting defendants from removing him from his position as a member of the Greater Baton Rouge Airport Commission. Plaintiff's request for a preliminary injunction was denied and plaintiff was thereafter removed from this position. Plaintiff has amended his petition and now seeks a declaratory judgment concerning his qualifications to hold the position on the Airport Commission and alternatively seeking to be reinstated into his position as Executive Director and Secretary of the Greater Baton Rouge Airport Commission.

The facts are essentially as follows: Plaintiff for a period of five years occupied his position of Executive Director and Secretary of the Greater Baton Rouge Airport Commission. On May 13, 1974, plaintiff resigned this position and was appointed to a position on the Greater Baton Rouge Airport Commission. Plaintiff's position on the Airport Commission has been declared vacant by the Parish Clerk, Rosemary Broussard, based on a legal opinion rendered by Parish Attorney, Joseph F. Keogh, stating that plaintiff is not qualified

to serve as a member of the Commission, because at the time of his appointment, plaintiff owned no property assessed in East Baton Rouge Parish. Pursuant to this legal opinion and declaration by Mrs. Broussard, plaintiff on March 4, 1975, at the Commission meeting was denied his position as a member of the Airport Commission.

Basically plaintiff contends that he meets the qualifications for the position on the Airport Commission; that if he does not meet the qualifications, then the property requirements deny him equal protection and due process of law and, thus, are unconstitutional as violative of the Equal Protection and Due Process Clauses of the Fourteenth Amendment to the United States Constitution; and alternatively that he is entitled to be reinstated to his former position as Executive Director and Secretary of the Greater Baton Rouge Airport District.

Act 151 of 1969 requires the ownership of "property assessed in East Baton Rouge Parish" in order for the person to serve on the Airport Commission.

The foremost question presented is: What does the word "property" mean in Act 151 of 1969 after considering its "most usual signification"? Our Legislature, in enacting that act, placed no limitation or meaning on the word "property" nor did it set forth any guidelines so as to determine the meaning of that word. Therefore, outside sources must be consulted, in light of the legislative intent, to decide the meaning of that word.

73 Corpus Juris Secundum, Property, Section 1, Page 137. sets forth the meaning of the term "Property" when used generally in a statute:

> "* * * Generally, as used in statutes, the term 'property' should be given its ordinary meaning * * *.

> "The word 'property' includes both real and personal property, and ordinarily will be construed as meaning both real and personal property, * * *."

The Louisiana Legislature in enacting the Louisiana Code of Civil Procedure Article 5251 (13) has given effect to the abovementioned broad interpretation of the mere word "property." This article states that:

> "(13) 'Property' includes all classes of property recognized under the laws of this state: movable or immovable, corporeal or incorporeal."

Likewise, in support of this unrestricted interpretation, the Louisiana Supreme Court in interpreting a taxing statute said in *Kansas City Life Insurance Company v. Hammett*, 177 La. 930, 149 So. 525, 526 (1933):

> "The term 'property' is sufficiently comprehensive to include every species of estate, real and personal, and everything which one person can own and transfer to another. It extends to every species of right and interest capable of being enjoyed as such upon which it is practical to place a money value."

The Louisiana Supreme Court then continued:

> "The word 'property' as that term is used in the statutes relating to assessment and taxation, refers to every species of valuable right or interest which is subject to ownership, or that which has an exchangeable value or which goes to make up one's wealth or estate; all things which have a pecuniary value. 'Property' says Webster, 'in a broad sense, is any valuable right or interest considered primarily as a source or element of wealth.' "

Since the word "property" is not qualified as to whether it must be real or movable property, the Court is of the opinion that "property" as used in the statute includes both real and movable property, with the only qualification being

that the property (real or movable) must be "assessed in East Baton Rouge Parish."

It is the Court's opinion that plaintiff has failed to prove that at the time of his appointment, he owned any property assessed in the Parish. The introduction into evidence of a pink slip showing that sales tax had been paid by Mr. Chappelle on a Porsche automobile does not satisfy the requirement of assessment as set out in the act. It is interesting to the Court that Mr. Chappelle was given an opportunity to present any evidence of the ownership of "assessed property" owned on May 8, 1974. This was done by Mrs. Rosemary Broussard, Parish Clerk, in her letter of February 20, 1975, to plaintiff (P-7).

The Court is now faced with the question of whether the subsequent purchase of real property assessed in the Parish (prior to the time of his removal) cured the infirmity that previously existed with respect to his qualifications to hold the office. The Court believes not. The qualifications for the office are determined at the time of the appointment, May 8, 1974, not February 7, 1975, the date of the purchase of real property in the Parish of East Baton Rouge.

We come now to the question of whether or not the requirement that plaintiff own property assessed in the Parish (either real or movable) is constitutional.

Plaintiff contends basically that any property requirement is violative of his rights under the Fourteenth Amendment of the United States Constitution in that it denies him equal protection of the law and due process of law.

Any law which discriminates between citizens must be judged according to the **right involved** and the **basis for the discrimination**.

If the **right involved** is a **fundamental right**, then the

government must show that there is a "compelling state interest" for the discrimination. It does not appear that there is a compelling state interest in requiring Airport Commissioners to be property owners. Thus, if the right to hold appointed office is a **fundamental right**, the property ownership requirement is unconstitutional as a denial of equal protection of the law in violation of the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution.

United States Supreme Court cases say that among the fundamental rights are marriage [*Loving v. Virginia*, 88 U.S. 1], procreation [*Skinner v. Oklahoma*, 316 U.S. 535], and contraception [*Eisenstadt v. Baird*, 405 U. S. 428]. The right to vote is a fundamental right [*Dunn v. Blumstein*, 405 U.S. 330]. The right to have one's vote weighed equally with others is a fundamental right [*Reynolds v. Sims*, 377 U. S. 533]. The right to travel interstate is fundamental [*Shapiro v. Thompson*, 394 U.S. 619] as are First Amendment rights [*Police Department of City of Chicago v. Mosley*, 408 U.S. 92].

If there is no authority for a fundamental right, it must be seen whether the right is based on basic values that underlie our society.

The Court does not believe that the right to hold an appointive office is a fundamental right. If the right involved is **not** a fundamental right, then plaintiff must prove that there is **no rational basis** for the distinction between citizens drawn by the statute. It appears that there is a rational basis for requiring Airport Commissioners to be property owners. This insures that the persons on the Airport Commission are affected by their decisions and concerned and connected with the area they represent.

In support of his contention that the property requirement is unconstitutional, plaintiff has cited the cases of

Kramer v. Union Free School District No. 15; 394 U. S. 621, 89 Supreme Court 1886 (1969); *Cipriano v. City of Houma*, 395 U. S. 701, 89 Supreme Court 1897 (1969); and *City of Phoenix, Arizona v. Kolodziejski*, 399 U. S. 204, 90 Supreme Court 1990 (1970). These cases involved the denial of the franchise to otherwise qualified electors, simply because they did not own real property. The Court is of the opinion that these cases are distinguishable from the instant case because the right to vote is a fundamental right, whereas, the Court does not believe that the right to hold an appointive office is a fundamental right. It is, therefore, the Court's opinion that the property ownership qualification of Act 151 of 1969 is not unconstitutional.

Finally it must be determined whether or not plaintiff is entitled to rescind the agreement he made to step down as Executive Director and Secretary of the Greater Baton Rouge Airport District in exchange for an appointment to the Greater Baton Rouge Airport Commission. The Court is of the opinion that Plaintiff is not so entitled.

Plaintiff contends that he entered into a contract of exchange between himself and the Airport Authority whereby he gave up one job in return for an appointment to the Airport Commission. While it is apparent to the Court that there were a great deal of political negotiations involved, the Court does not believe that the Authority acting as a governmental body ever bound itself to such an exchange agreement. Plaintiff's testimony indicates that his agreement was made by long distance telephone call with Councilman Currier. The letter of resignation submitted by Mr. Chappelle (D-4) contained no reservations, qualifications, or limitations on his resignation. The letter addressed to Mr. Joseph F. Keogh, the City-Parish Attorney, reads as follows:

"I hereby submit my resignation as Executive Director and Secretary of the Greater Baton Rouge Airport District."

The Court further notes that the minutes of the Greater Baton Rouge Airport Authority (D-1) merely accept plaintiff's resignation and at the same time appoint him to the position on the Airport Commission. No correlation, limitation, or other connection is drawn between the two acts so as to evidence an intent to enter into a contract of exchange in relation to the two positions.

The Court refuses to believe that the City Council was guilty of any fraud or artifice because they knew that plaintiff lacked the necessary qualifications for appointment to the Commission. There was not one scintilla of evidence, other than the testimony of the plaintiff, in regard to any "deal" regarding the job swap. It is incumbent upon the plaintiff to prove the facts underlying any such arrangement. On the basis of the evidence presented on the trial of the case, the Court is of the opinion that plaintiff has fallen far short of showing that the City Council entered into any contract of exchange with him. The Court is of the opinion that the negotiations between the parties were of a political nature and not of a contractual nature. The Court is, therefore, of the opinion that the negotiations between the parties did not amount to a contract of exchange as contemplated in LSA-C.C. 2660, et seq. Accordingly, the Court does not believe that under the mandate of LSA-C.C. 2663 plaintiff is entitled to be returned to his position as Executive Director and Secretary of the Greater Baton Rouge Airport District.

Defendants have requested their attorney's fees in this matter. This point was not argued and no evidence was presented which showed a statutory or contractual basis on the claim for attorney's fees. Therefore, the Court is of the opinion that the claim for attorney's fees is without merit.

For the above and foregoing reasons, the Court is of the opinion that defendants are entitled to judgment in their favor and against plaintiff, E. C. Chappelle, Jr., dismissing

plaintiff's suit. Defendants' request for attorney's fees is denied. All costs of this proceeding are to be borne by plaintiff.

Judgment will be signed accordingly.

Baton Rouge, Louisiana, this 23rd day of July, 1975.

s/ STEVE A. ALFORD, JR.
Judge

NUMBER 179,759, DIVISION "J"
19TH JUDICIAL DISTRICT COURT
PARISH OF EAST BATON ROUGE
STATE OF LOUISIANA

E. C. CHAPPELLE, JR.

versus

THE GREATER BATON ROUGE AIRPORT DISTRICT, ET AL

JUDGMENT

This cause came on the 22nd day of July, 1975, for hearing pursuant to the previous orders of this court. Present: Herschel C. Adcock, attorney for E. C. Chappelle, Jr., and Edward J. Fetzer, attorney for the defendants.

After hearing the pleadings, testimony and oral arguments,

IT IS ORDERED that judgment is rendered herein in favor of defendants, Woodrow W. Dumas; William J. Guste, Jr.; and William S. Day, Jr., Jewel J. Newman, Earl Harrison, George R. Dabbs, Michael G. Roubique, Edgar L. Watts, Jr., Stanley J. Gross, Johnny H. Dykes, William T. Winfield, Joseph A. Delpit, Tommy Neck, and Dr. C. P. Currier in their capacity as members of The Greater Baton Rouge Airport District, The Greater Baton Rouge Airport Authority and The City Council, dismissing plaintiff's suit at his cost.

JUDGMENT FURTHER RENDERED in favor of plaintiff and against defendants denying defendants' request for attorney's fees.

JUDGMENT RENDERED on the 23rd day of July, 1975.

JUDGMENT READ AND SIGNED in Open Court on this 28th day of July, 1975.

s/ STEVE A. ALFORD, JR.
Judge, 19th Judicial District Court

NUMBER 179,759, DIVISION "J"
19TH JUDICIAL DISTRICT COURT
PARISH OF EAST BATON ROUGE
STATE OF LOUISIANA

E. C. CHAPPELLE, JR.

versus

THE GREATER BATON ROUGE
AIRPORT DISTRICT, ET AL

ORAL REASONS FOR JUDGMENT

This is a suit for an injunction. Defendants are the members of the Baton Rouge City Council, the Greater Baton Rouge Airport District, the Greater Baton Rouge Airport Authority, who are named in their dual capacity as members of each, Mayor-President Woodrow Dumas of the city of Baton Rouge and the parish of East Baton Rouge.

The matter in controversy concerns the plaintiff's resignation on May 13, 1974, from the position of Executive Director and Secretary of the Greater Baton Rouge Airport District; his taking a position on the Greater Baton Rouge Airport Commission; a legal opinion rendered by Parish Attorney, Joseph F. Keogh, that plaintiff is not qualified to serve as a member of the Airport Commission because at the time of his appointment the petitioner owned no real property in the parish of East Baton Rouge, and the declaration of the Parish Clerk, Rosemary Broussard, that plaintiff's position on the Greater Baton Rouge Airport Commission is now vacant and is eligible to be filled by a qualified person.

Plaintiff sought a temporary restraining order directed

to the defendants, restraining them from removing plaintiff from the Greater Baton Rouge Airport Commission and from appointing anyone else to occupy the petitioner's position on said Commission, until a Court determination is made of plaintiff's status with regard to his qualifications for that position; and, further, from appointing any other person or elevating D. R. Gianelloni from his present position of temporary Executive Director and Secretary of the Greater Baton Rouge Airport District to the head of that position until the validity of the compromise agreement is determined.

Judge Luther Cole of this Court denied the restraining order on February 26, 1975, stating as his reason for such refusal "[t]he Court will not restrain a contemplated legislative act of defendants."

Presently before the Court is a rule ordering the defendants to show cause why a preliminary injunction in the form and substance of the aforementioned temporary restraining order prayed for should not issue herein.

LSA-C.C.P. Art. 3601 provides that:

> "An injunction shall issue in cases where irreparable injury, loss, or damage may otherwise result to the applicant, or in other cases specifically provided by law.
>
> "During the pendency of an action for an injunction the court may issue a temporary restraining order, a preliminary injunction, or both, in accordance with the provisions of this Chapter."

A writ of injunction should issue only where the party seeking it is threatened with irreparable loss or injury and is without an adequate remedy at law and where the facts supporting the writ are clear and convincing. Law for this proposition is found in *Louisiana State Board of Education, etc. v. National Collegiate Athletic Association*, 273 So.2d 912 (La. App. 3rd Cir. 1973).

Further, a preliminary injunction is an interlocutory procedure usually conservatory in nature, and has the object and purpose of maintaining the existing status of litigants upon a prima facie showing that to do otherwise would result in irreparable injury pending a decision on the permanent injunction, which is dispositive of the issues on the merits. Jurisprudence in this regard is found in *Employers Overload Company v. Employers Overload Company of New Orleans, Inc., et al*, 266 So.2d 546 (La. App. 4th Cir. 1972).

It appears to this Court that plaintiff has not made a prima facie showing of "irreparable injury, loss, or damage" such as would entitle him to a preliminary injunction pending decision on the permanent injunction.

The only threatened irreparable injury alleged by plaintiff or proven by the evidence this morning is found in, and based upon Para. 18 of plaintiff's petition regarding "continued and constant innuendo" and "immediacy of the pending danger of petitioner's being removed from his position on the Commission * * *.", and testimony to the effect this morning that removal of him from the Commission would interfere with his education as an aviation expert in connection with his work with Hickory Construction Company.

It appears that despite the opinion of the Parish Attorney to the effect that the plaintiff lacks the qualifications to hold his position on the Airport Commission, and the declaration of the Parish Clerk that the plaintiff's position on the Airport Commission is now vacant and eligible to be filled, the plaintiff as a matter of fact has not been removed by the City Council from his position on the Airport Commission. It is the fear of removal from the Commission that prompts the plaintiff's suit for injunction. The Court is of the opinion that a threatened removal does not amount to "irreparable injury, loss, or damage." If the threat becomes a reality and the plaintiff is removed, or indeed if he has al-

ready been removed, then he has an adequate remedy at law by means of a suit to be reinstated to that position.

It further appears that the "immediacy of the pending danger" related to by plaintiff has come and gone, for the Parish Council met subsequent to the filing of the petition by plaintiff and did not vote to remove him, or take any action whatsoever if indeed a vacancy existed on the Commission.

It further appears that plaintiff seeks at this time to have the Court interfere with a contemplated legislative act of the defendants. Since the plaintiff has an adequate remedy at law if he is removed, for the Court to prevent the Council from removing him prior to a legislative decision would amount to a usurpation of the judiciary of a legislative function of a legislative branch of government.

The plaintiff contends that if he is not qualified to serve on the Commission because he did not own immovable property at the time of his appointment, then Act 151 of 1969 is a denial of equal protection of the law, and as such is a violation of his Constitutional rights.

A municipal council, when acting, or proposing to act, in a legislative capacity, upon a subject within the scope of its powers, is entitled to the same immunity from judicial interference as is the state legislature or any other law-making body. A court, being vested with judicial, not legislative, powers, cannot properly interpose any obstacle to the exercise of the legislative discretion vested in such municipal body. Subject to the exceptions noted, a court will not enjoin a municipal legislative body from exercising legislative powers, even though its action may be unconstitutional or ultra vires, especially at the suit of a private party, and by so doing virtually sit in judgment on proposed city legislation in advance of its enactment.

The usual ground for asking injunctive relief against the enforcement of statutes is their invalidity. But invalidity, of itself, is not sufficient to warrant the exercise by the court of its extraordinary injunctive power. The mere fact that a statute is alleged to be unconstitutional or invalid will not entitle a party to have its enforcement enjoined. Further circumstances must appear to the Court before bringing the case under the recognized Court jurisdiction and presenting some actual or threatened and irreparable injury to complainant's rights for which there is no adequate remedy at law. If it is apparent that the law can furnish all the relief to which the complainant is entitled, the injunction will be refused.

Injunctive relief is a harsh remedy, and should not be granted unless facts supporting its justification are clear and convincing, and the rules governing the use of the injunctive process are strictly construed. The law for this proposition is found in *Maybelle M. Olsen v. The City of Baton Rouge, et al*, 247 So.2d 889 (La. App. 1st Cir. 1971).

Viewing all the above, the Court is of the opinion that plaintiff has not made a prima facie showing of "impending irreparable injury, loss, or damage" such as is required for the issuance of a preliminary injunction; that the Court should not restrain a contemplated legislative act unless there is a grave danger of irreparable injury or damage to property rights.

Accordingly, without passing on the merits of whether plaintiff may be entitled to a permanent injunction, after a full hearing on the merits of the matter, the rule to show cause why a preliminary injunction should not issue is hereby dissolved and the preliminary injunction denied.

Judgment will be signed accordingly.

NUMBER 179,759, DIVISION "J"
19TH JUDICIAL DISTRICT COURT
PARISH OF EAST BATON ROUGE
STATE OF LOUISIANA

E. C. CHAPPELLE, JR.

versus

THE GREATER BATON ROUGE
AIRPORT DISTRICT, ET AL

JUDGMENT

This matter came on to be heard, pursuant to an order issued by this Court, on the 4th day of March, 1975;

Present in Court were Herschel C. Adcock, attorney for plaintiff, Joseph F. Keogh and Edward V. Fetzer, attorneys for the defendants;

After reviewing and considering the pleadings and evidence adduced on the trial of said rule, and the law, and for oral reasons this day assigned.

IT IS ORDERED, ADJUDGED AND DECREED that the order issued previously herein ordering the defendant to show cause on this day why a preliminary injunction should not issue herein, be and it is hereby recalled, vacated and set aside and further;

IT IS ORDERED, ADJUDGED AND DECREED that the preliminary injunction herein prayed for is hereby denied, and further;

IT IS ORDERED, ADJUDGED and DECREED that plaintiff pay all the costs of these proceedings.

JUDGMENT RENDERED, March 4, 1975, in Open Court, and Signed in Open Court on the 11th day of March, 1975 Baton Rouge, Louisiana.

s/ STEVE A. ALFORD, JR.
Judge, 19th Judicial District Court

NUMBER 179,759, DIVISION "J"
19TH JUDICIAL DISTRICT COURT
PARISH OF EAST BATON ROUGE
STATE OF LOUISIANA

E. C. CHAPPELLE, JR.

versus

THE GREATER BATON ROUGE
AIRPORT DISTRICT, ET AL

APPEAL FROM THE NINETEENTH JUDICIAL DISTRICT COURT, PARISH OF EAST BATON ROUGE, HON. STEVE A. ALFORD, JUDGE, PRESIDING

Before Sartain, Edwards, and Bennett
Edwards, J.

Plaintiff-appellant sued to enjoin defendant-appellees from removing him from his position as member of the Greater Baton Rouge Airport Commission. When the preliminary injunction was denied, appellant was removed from the Commission. Appellant amended his petition and sought a declaratory judgment relative to his qualifications to hold the position on the Commission and alternatively asked to be reinstated to his former position of Executive Director and Secretary of the Greater Baton Rouge Airport District (District). The trial court rendered judgment in favor of defendants and against plaintiff, dismissing his suit. From this ruling plaintiff now appeals.

There are three issues before us:

1. Did appellant fulfill the requirement of Act 151 of 1969 that appointees to the Commission must own "property assessed in East Baton Rouge Parish?"

2. If not, is that requirement violative of appellant's rights under the Fourteenth Amendment to the United States Constitution guaranteeing equal protection of the laws?

3. Was a contract of exchange effectuated between appellant and appellees whereby appellant was to give up his position as Director of the District in return for his appointment to the Commission, and did his removal from the Commission constitute a breach thereof warranting in law the relief of reinstatement to his former position?

FACTS

The facts as found by the trial court and as reflected by the record are not in dispute. Appellant served as Director of the District for a period of some five years until his resignation on May 13, 1974. Prior to this date, appellant had experienced increasing unspecified harassment in his capacity as Director. As a compromise gesture, he then proposed to Dr. C. O. Currier, member of the City-Parish Council, the appointing authority for the Commission, that he, appellant, would resign his position as Director in exchange for his being appointed to the Commission. On May 13, 1974, the appellant resigned as Director and was appointed to the Commission. Subsequently, the Parish Clerk declared appellant's position on the Commission vacant. The basis for this action was a legal opinion of the Parish Attorney stating that appellant was not qualified to serve as a member of the Commission because at the time of his appointment he owned no property assessed in East Baton Rouge Parish. This suit followed.

(1) "Property assessed" under Act 151 of 1969

Act 151 of 1969 requires that an appointee to the Com-

mission own "**property assessed in East Baton Rouge Parish.**" At the trial, appellant introduced evidence that he had paid sales tax on an automobile that he purchased prior to his appointment in 1974. He also introduced evidence of a purchase of a piece of immovable property located in East Baton Rouge Parish on February 7, 1975.

Initially, we agree with the trial court's determination that the purchase on February 7, 1975, several months after the appointment, is irrelevant to the determination of appellant's qualifications for the appointment. Qualifications for appointive office are determined at the time of the appointment.

The question remains whether the ownership of and the payment of sales tax on the purchase of the automobile satisfy the **requirement of "property assessed."**

The appellant contended and the trial court agreed that the term "property" should include movables as well as immovables. Where, as here, there are no limitations placed on the term within the particular statute in question, both the legislation and jurisprudence support such a broad, unrestricted interpretation. See *La. Civ. Code* art. 14; *La. Code Civ. P.* art. 5251 (13); *Kansas City Life Ins. Co. v. Hammett*, 177 La. 930, 149 So. 525 (1933); 73 C.J.S. *Property* Section 1.

The further qualification contained in the Act is that the property be "assessed in East Baton Rouge Parish." Appellant argues that (1) property does not have to appear on the assessment rolls to be assessed and (2) the payment of a sales tax constitutes an assessment of that property. Pretermitting for the moment appellant's initial contention, we cannot accept the argument that the payment of sales tax constitutes an assessment. Black's Law Dictionary 150 (rev. 4th ed. 1968) makes clear the distinction between the two. "Assessment" is:

> "The listing and valuation of property for the purpose of apportioning a tax upon it, either according to value alone or in proportion to benefit received. Also determining the share of a tax to be paid by each of many persons; or apportioning the entire tax to be levied among the different taxable persons, establishing the proportion due from each. . . . It fixes the liability of the taxpayer and ascertains the facts and furnishes the data for the proper preparation of the tax rolls.
>
> "Assessment" and "levy" are frequently used interchangeably. . . . Though properly speaking it does not include the levy of taxes. . . . Assessment is also popularly used as synonym for taxation in general, the authorative imposition of a rate or duty to be paid, but in its technical signification it is only taxation for a special purpose or local improvement, local taxation as distinguished from general taxation; taxation on principle of apportionment according to the relation between burden and benefit; whole taxes are impositions for purpose of general revenue.
>
> "An assessment is doubtless a tax, but the term implies something more; it implies a tax of a particular kind, predicated upon the principle of equivalents, or benefits, which are peculiar to the persons or property charged therewith, and which are said to be assessed or appraised, according to the measure or proportion of such equivalents; whereas a simple tax is imposed for the purpose of supporting the government generally, without reference to any special advantages which may be supposed to accrue to the persons taxed. Taxes must be levied, without discrimination, equally upon all the subjects of property, whilst assessments are only levied upon lands, or some other specific property, the subjects of the supposed benefits: to repay which the assessment is levied."

So defined, the payment of a sales tax does not constitute an assessment.

Although, as appellant contends, the appearance of property on the assessment rolls may not be the exclusive proof

of assessment, such listing is indeed competent evidence, and such that the legislature might choose to rely upon for determining assessment and ownership of property assessed.

(2) **Constitutionality of Act 151 of 1969**

Does the requirement of Act 151 of 1969 that appointees own property assessed in East Baton Rouge Parish violate appellant's right to equal protection of the law?

When a legislative classification is challenged, as here, on Fourteenth Amendment equal protection grounds, one of two tests may be applied to determine the validity of the statute. The "compelling state interest" test is applied when there is involved a "fundamental" right, such as the right to vote or to marry whomever one chooses, or when there is employed a "suspect" criterion, such as race or sex. In all other cases traditional equal protection standards apply. Appellant cites, and this court has found, no cases holding that the right to be considered for appointive public office is a fundamental right. Therefore, we will test the classification herein by traditional standards of equal protection.

Traditional standards of equal protection have been long established. In *McGowan v. Maryland*, 366 U.S. 420, 81 S. Ct. 1101 (1961), the Court summarized the rule:

> "The constitutional safeguard (equal protection) is offended only if the classification rests on grounds wholly irrelevant to the achievement of the State's objective. State Legislatures are presumed to have acted within their constitutional power despite the fact that, in practice, their laws result in some inequality. A statutory discrimination will not be set aside if any state of facts reasonably may be conceived to justify it."
>
> 81 S. Ct. at 1105

In enacting Act 151 of 1969, the legislature sought to insure that the members of the commission would have a substantial interest in performing their duties effectively and conscientiously. The legislature could have concluded reasonably that property owners of East Baton Rouge Parish would have that interest. **To effectuate this objective, the legislature chose as its criterion for appointment to the Commission, the ownership of "property assessed in East Baton Rouge Parish."** The fact that the determination of property ownership could have been made otherwise in no way militates against the validity of the choice made. In the achievement of a valid legislative objective, there is no requirement under traditional equal protection standards that the legislature choose the best method available, but only that there be a rational basis for the means chosen.

La. R.S. 47:1956-1957 require every owner of property, movable and immovable, to submit to the Parish Assessor a list of that property. The legislature could have chosen to utilize this requirement as a simple method of determining property ownership for the purposes of eligibility for appointment to the Commission under Act 151 of 1969. Such a scheme is not irrational.

Appellant contends that the payment of sales tax on the purchase of an automobile should suffice to qualify him under the Act. There is no doubt that the payment of such a tax is evidence of ownership of property, at least at the time of purchase. **However, it does not constitute an assessment of his property, as indicated** *supra*. At issue is the rationality **vel non** of the legislative scheme employed. **The legislature chose to make assessment, rather than payment of sales tax, the criterion of ownership.** We are not concerned with the relative merits of the possible schemes; the one chosen is rationally related to a valid legislative objective and is therefore constitutional.

Appellant cites *Turner v. Fouche*, 396 U.S. 346, 90 S.Ct. 532 (1970) as mandating that we hold Act 151 of 1969 unconstitutional. In *Turner*, the Court found a Georgia statutory

requirement of ownership of immovable property for appointment requirement of ownership of immovable property for appointment to a county board of education to deny equal protection of the laws under the traditional test. However, considering our increasing population and diminishing availability of land, there are many good citizens who own no immovable property but who do own movable property in varying amounts. **Therefore, a classification like that of the Georgia statute which eliminates those who own no immovable or real property from consideration for public office is far more invidious than one like ours which bars only those who own no property at all.** With this in mind, we note the Court's closing remarks in *Turner, supra*:

> **"Without excluding the possibility that other circumstances might present themselves in which a property qualification for office-holding could survive constitutional scrutiny**, we cannot say, on the record before us, that the present freeholder requirement for membership on the county board of education amounts to anything more than invidious discrimination. (emphasis added).
>
> 90 S.Ct. at 542

We therefore hold the legislative scheme employed under Act 151 of 1969 *prima facie* constitutional. There has been no allegation that the assessment practices **as applied** in this case are unconstitutional, nor has there been any evidence adduced on this issue. We cannot take judicial notice of the assessment practices of the assessor of East Baton Rouge Parish. *La.* R. S. 15:422. We therefore do not pass on the issue of the constitutionality of the **application** of the legislative scheme.

3. **Exchange**

Appellant testified at the trial concerning his proposal to Dr. Currier and of the understanding that he, appellant, had that an agreement was made to "exchange" his position as Director for a position on the Commission. Because he

was later ousted from the Commission, appellant now invokes *La. Civ. Code* art. 2663[1] for relief in the form of reinstatement as Director.

Appellant is not in a position to avail himself of the provisions of this article.

La. Civ. Code art. 2660 defines exchange as a contract whereby the parties give to one another one thing for another. *La. Civ. Code* arts. 2660-2667 (Of Exchange) are found in Book III of the Civil Code—"Of The Different Modes Of Acquiring The Ownership Of Things." The last, Article 2667, states that, except for the differences found in the preceding seven articles, all the provisions relative to sales apply to exchange. Chapter 3 of Title VII (Of Sale) is titled "Of Things Which May Be Sold." "Effects of commerce" (Article 2448); "the rights, titles and interests to an inheritance" (Article 2449); "an uncertain hope . . . as the fisher sells a haul of his net before he throws it" (Article 2451)—all are illustrative of the various things which may be sold or exchanged. **However, implicit in every sale or exchange is ownership, acquired and divested.** A public official does not **own the public office he holds**; he cannot barter or sell his office as an effect of commerce, an inheritance right, an uncertain hope, or as anything else. He is elected or appointed to a position of fidelity to the public trust.

There is no merit in, and this court will not consider, applying the codal provisions of our private law of exchange to a political controversy involving the attempted barter of public office.

The decision of the trial court is affirmed at appellant's cost.

AFFIRMED.

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1. The exchanger, who is evicted by a judgment of the thing he has received in exchange, has his choice either to sue for damages or for the thing he gave in exchange.

COURT OF APPEAL, FIRST CIRCUIT,
STATE OF LOUISIANA

No. 10,621

PARISH OF EAST BATON ROUGE

E. C. CHAPPELLE, JR.

versus

THE GREATER BATON ROUGE
AIRPORT DISTRICT, ET AL

On application for re-hearing.

Rehearing refused.

Baton Rouge, Louisiana, April 12, 1976.

s/ C. Lenton Sartain

s/ Wallace A. Edwards

Judges

SUPREME COURT OF LOUISIANA
New Orleans, 70112
June 9, 1976

No. 58,025

E. C. CHAPPELLE, JR.

versus

THE GREATER BATON ROUGE
AIRPORT DISTRICT, ET AL

In re: E. C. Chappelle, Jr., applying for Certiorari, or writ of review, to the Court of Appeal, First Circuit, Parish of East Baton Rouge.

Writ denied: no merit in the assignment of errors.

/s/ WFM

/s/ JWS

/s/ FWS

/s/ AT, Jr.

DIXON, J., is of the opinion the writ should be granted.

CALOGERO, J., is of the opinion the writ should be granted. Turner v. Fouche, 396 U.S. 346, 90 S.Ct. 532 (1970) mandates relief for applicant.

STATEMENT OF COSTS

BEFORE ME, E. Wade Shows, Notary Public in and for the Parish of East Baton Rouge, State of Louisiana

PERSONALLY CAME AND APPEARED E. C. Chappelle, Jr., appellant herein, and after being first duly sworn did depose and say that

In preparation of the printed appendix to his brief to the Supreme Court of the United States in November 76-352 he has incurred the costs of $_____.

E. C. CHAPPELLE, JR.

SWORN TO AND SUBSCRIBED before me
this 14th day of February, 1977.

E. WADE SHOWS, Notary Public

CERTIFICATE OF SERVICE

I, Herschel C. Adcock, one of the attorneys for E. C. Chappelle, Jr., appellant herein, and a member of the Bar of the Supreme Court of the United States, do hereby certify that on the 22nd day of February, 1977, I served a copy of the foregoing appendix, together with a statement of the costs of preparing the appendix, on The Greater Baton Rouge Airport District, et al., appellees, in connection with this appeal, by delivering the same to their counsel of record, Mr. Joseph F. Keogh, Parish Attorney, at his office in the Municipal Building, Baton Rouge, Louisiana, and upon Mr. William J. Guste, Jr., Attorney General for the State of Louisiana.

HERSCHEL C. ADCOCK, Attorney
for the Appellant

Supreme Court, U. S.
FILED
NOV 30 1976
MICHAEL RODAK, JR., CLERK

IN THE

SUPREME COURT OF THE UNITED STATES

NUMBER 76-352

E. C. CHAPPELLE, JR.,

Appellant,

versus

THE GREATER BATON ROUGE AIRPORT DISTRICT, ET AL,

Appellees,

On Appeal from the Supreme Court of the State of Louisiana

BRIEF OF APPELLEES IN OPPOSITION TO APPELLANT'S RIGHT TO APPEAL TO THE UNITED STATES SUPREME COURT

JOSEPH F. KEOGH
Parish Attorney
Attorney for Greater
Baton Rouge Airport
District, et al,
Appellees

202 Municipal Building
Baton Rouge, Louisiana 70821
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ORTLIEB PRESS BATON ROUGE

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MOTION TO DISMISS APPEAL

NOW INTO COURT, through undersigned counsel, comes Defendant-Appellee, Greater Baton Rouge Airport District, who with respect moves the Court to dismiss the appeal of E. C. Chappelle, Jr. in the above captioned matter on the ground that no substantial federal question is raised in that the Constitution of the United States affords Plaintiff-Appellant no relief under the facts as alleged.

Respectfully submitted,

By:_____
Joseph F. Keogh, Parish Attorney

CERTIFICATE OF SERVICE

I hereby certify that I have mailed, postage prepaid, a copy of the foregoing motion to counsel of record for Plaintiff-Appellee:

Herschel C. Adcock
821 Main Street
Post Office Drawer 3037
Baton Rouge, Louisiana 70821

Baton Rouge, Louisiana, this 19th day of November, 1976.

_____
Joseph F. Keogh, Parish Attorney

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IN THE
SUPREME COURT OF THE UNITED STATES

NUMBER 76-352

E. C. CHAPPELLE, JR.,
Appellant,

versus

THE GREATER BATON ROUGE AIRPORT DISTRICT, ET AL,
Appellees,

On Appeal from the Supreme Court of the State of Louisiana

BRIEF OF APPELLEES IN OPPOSITION TO APPELLANT'S RIGHT TO APPEAL TO THE UNITED STATES SUPREME COURT

ARGUMENT

May It Please The Court:

Appellant herein seeks to have this Honorable Court strike down Act 151 of 1969, of the Louisiana Legislature as being violative of the equal protection clause of the United States Constitution. As shall more perfectly appear hereafter, appellant's claim is without merit under prior decisions of this Court, and only an uncalled for and unnecessary extension of the equal protection concept would afford plaintiff any relief. Appellant's appeal thus presents no substantial federal question and should be dismissed.

Under attack by plaintiff-appellant is a requirement of said Act 151 that requires the commissioners of the Greater

Baton Rouge Airport District to own ". . . property assessed in East Baton Rouge Parish . . .". Though plaintiff cites numerous cases which can be easily distinguished on their facts and reasoning, principal reliance is placed on the case of *Turner vs. Fouche*, 396 U.S. 346, 90 S. Ct. 532 (1970).

In *Turner* this Honorable Court struck down a Georgia scheme which required ownership of **immovable** property in order to be eligible for membership on a county board of education. Such a scheme would in fact have a great potential for discriminating invalidly against individuals, in light of the realities of our present economic situation. Increased population and resultant increase in demand for residences have driven real property prices beyond the wildest imaginations of many. Even those individuals of some means often do not own real property in some areas simply because there is no suitable property available at any price!

This Honorable Court was obviously aware of these realities in acting to hold such a "free-holder" requirement invalid. There is no hint that all property qualifications are now to be viewed as inherently unjustified. The closing remarks of this Court in *Turner* are to be noted:

> **"Without excluding the possibility that other circumstances might present themselves in which a property qualification for office-holding could survive constitutional scrutiny,** we cannot say, on the record before us, that the present free-holder requirement for membership on the county board of education amounts to anything mor than invidious discrimination." (emphasis added).
>
> 90 S. Ct. at 542.

The Court in *Turner* applied only the traditional test for denial of equal protection: whether the challenged classification rests on grounds wholly irrelevant to the achievement

of a valid state objective. The "free-holder" scheme in Georgia was thus held to be wholly irrelevant in achieving any such objectives.

Surely the same cannot be said for the instant qualification requirement which is merely that a person own "property assessed" in East Baton Rouge Parish. There is no claim that the **application** of the scheme is accomplished in a way so as to make it unconstitutional. All parties, and the trial and appellate courts agreed that the term "property" denotes real or personal (movable) property and that either one would satisfy the condition of Act 151.

Appellant states in his brief (p. 12) that personal property is seldom assessed and that real property is "usually the only property appearing on the assessment rolls". In fact, as shown by the affidavit of the assessor of East Baton Rouge Parish attached hereto, personal property in the amount of ONE HUNDRED FIFTY-SEVEN MILLION, TWO HUNDRED NINETEEN THOUSAND, SIX HUNDRED FIFTY and 00/100 ($157,219,650.00) DOLLARS appears on the assessment rolls for 1976. Additionally there is ONE HUNDRED FIFTY-ONE MILLION, THREE HUNDRED FIFTY-NINE THOUSAND, ONE HUNDRED FIFTY and 00/100 ($151,359,150.00) DOLLARS of industrial area movable property assessed. (See Appendix No. 1). The above figures do not include the movable property assessed to public utilities.

One further point needs to be stressed at this juncture. The job as commissioner sought to be retained by Mr. Chappelle is a non-compensated position. There is no remuneration received for services rendered. Thus, there are only a couple of motivations for wanting to hold such a job:

1) A spirit of civic mindedness and pride in the community in which one has substantial social, personal, and property connections, and;

2) A desire to use the influence of the position to further one's own personal gain or outside business interests.

There was some testimony at the trial of this matter and at the earlier preliminary injunction hearing which indicated that Mr. Chappelle was and/or is employed by a firm(s) which does business with the Greater Baton Rouge Airport District. (See Appendix No. 2). Thus, one might question whether Mr. Chappelle's motives fall within No. 1 or No. 2 above. This matter was admittedly not fully resolved, as the trial judge cut off further inquiry into this area. (See Appendix No. 2).

The right to hold an appointive, non-remunerative public office is simply not a fundamental right, as defined by prior decisions of this Honorable Court. It would indeed seem incongruous to hold that there is a fundamental constitutional right to hold a position, the appointment and removal from which lies totally within the discretion of an appointing authority. This would be stretching the concept of equal protection beyond comprehension, and would in effect be an exercise in academics, since the power to appoint and remove would still be exercised by the autonomous decision of the appointing body.

Any law which discriminates between citizens must be judged according to the right involved and the basis or reason for discrimination. If it is a fundamental right, the governing body must show a "compelling state interest" for the discrimination. If the right involved is **not** a fundamental right, the plaintiff must show that there is **no** rational basis for the distinction.

In the instant case, it is manifest that there is a very rational basis for the distinction. The legislature has sought to insure that members of the commission would have a substantial interest in performing their duties effectively and

conscientiously. Looked at in the proper light, the restriction is not so much on one who would hold the job, but on the appointing authority, as to who they can consider. Surely it is not irrational to feel that a person whose property is to be affected along with that of his neighbors by his decisions, will make those decisions based on the good of the majority of residents. No less an authority than the reputed Son of God is reported to have said: "For where your treasure is, there will your heart be also." (Matt. 6:21).

Plaintiff cites numerous cases to show that property requirements are unconstitutional, among them *Kramer v. Union Free School District No. 15*, 394 U.S. 621, 89 Supreme Court 1886 (1969); *Cipriano v. City of Houma*, 395 U.S. 701, 89 Supreme Court 1897 (1969); and *City of Phoenix, Arizona v. Kolodziejski*, 399 U.S. 204, 90 Supreme Court 1990 (1970).

These cases involved the denial of the franchise to otherwise qualified electors. Thus, they were dealing with a fundamental right which required a showing of a "compelling state interest". The Trial Court, the Appeals Court, and apparently the Louisiana Supreme Court felt that the right to hold a non-compensated appointive office is not a fundamental right. This Court is asked by plaintiff to hold otherwise. Such a holding would be a gross distortion of equal protection and give impetus to a further unwarranted intrusion on the rights of the several states by the federal government.

Plaintiff's appeal must be dismissed for want of a substantial federal question.

Appendix No. 1

AFFIDAVIT

STATE OF LOUISIANA
PARISH OF EAST BATON ROUGE

BEFORE ME, the undersigned Notary, personally came and appeared Frank Granger, who being first sworn by me, did depose and say:

That he is the assessor for East Baton Rouge Parish, State of Louisiana, and as such is qualified to make this affidavit;

That there is personal property assessed on the current assessment rolls in East Baton Rouge Parish in the amount(s) of ONE HUNDRED FIFTY-SEVEN MILLION, TWO HUNDRED NINETEEN THOUSAND, SIX HUNDRED FIFTY and 00/100 ($157,219,650.00) DOLLARS with additional personal propert yin the industrial area assessed at ONE HUNDRED FIFTY-ONE MILLION, THREE HUNDRED FIFTY-NINE THOUSAND, ONE HUNDRED FIFTY and 00/100 ($151,359,150.00) DOLLARS;

That the above figures do not include movable (personal) property assessed to public utilities.

/s/ Frank Granger
Frank Granger, Assessor

SWORN TO AND SUBSCRIBED before me, Notary Public, on this 18th day of November, 1976 at Baton Rouge, Louisiana.

/s/ Stephen R. Wilson
Stephen R. Wilson, Notary

Appendix No. 2

Excerpt from Trial Transcript of Suit No. 179,759, Division J 19th Judicial District Court Page 52

BY MR. FETZER:

Q Now, when you say the field of aviation, in what — that's in general terms, specifically what area are you speaking of?

A In airport management.

Q In airport management?

A Right, and also technology.

Q Would you say that being a member of the Commission fulfills that right that you might have in this field of airport management?

A If I participate in it like I should, it would.

Q And how is that?

A Well, to attend the meetings and stay current in all of the fields of aviation.

Q While you were executive director did the Airport Commission manage the airport?

A I think a better description would be they furnished overall guidelines and I administered the day to day operation of the airport.

Q You as executive director?

A Right.

Q So, being a member of the Commission wouldn't necessarily fulfill that right that you speak of as being — furthering your position of airport management?

A Well, I think the commissioner has to stay up on what goes on in aviation, both what the other directors are doing and everything to be able to furnish the proper guidelines.

Q Mr. Chappelle, where are you presently employed?

A With Hickory Construction.

Excerpt from Trial Transcript of Suit No. 179,759, Division J 19th Judicial District Court Page 56

relevancy back then, because it didn't have any effect on the judgment of the Court.

MR FETZER: The injunction was denied.

THE COURT: That's right.

MR. FETZER: I dont know what part it might' have played, Your Honor, but of course, we consider it —

THE COURT: Well, I'm of the opinion that the relevancy of that thing is practically nil, so get on to something else. Whether he's working for Hickory or not doesn't make any difference.

BY MR. FETZER:

Q Do you have any business with the Airport now in connection with Hickory?

A I don't, no.

Q Did Hickory have any business with the Airport while you you (sic) were Director?

A Yes.

Q What business was that?

A Airport lighting.

Q Airport lighting.

MR. ADCOCK: Your Honor,

Excerpt from Trial Transcript of Suit No. 179,759, Division J 19th Judicial District Court Page 57

once again, I want to object. If counsel is trying to set some sort of pattern to give some basis for the removal of Mr. Keogh from this Commission then I want to object.

THE COURT: It's not Mr. Keogh, for goodness sake, Mr. Chappelle.

MR. ADCOCK: I beg your pardon, Mr. Chappelle, if in fact there was reason to remove Mr. Chappelle, then they should have followed the Plan of Government and removed him, and not gone through the procedure that they did and I want to object to anything that may be brought up in this courtroom so that I can preserve my rights in the event there is a hearing.

THE COURT: I agree with you. Didn't you say you wanted to withdraw it anyway?

MR. FETZER: Well, we will leave it in, subject to his objection.

MR. FETZER: Your Honor, that's all the questions I have at this time of Mr. Chappelle. I would like to reserve

PROOF OF SERVICE

I, Joseph F. Keogh, Attorney for the Greater Baton Rouge Airport District, et al, Appellees herein, do hereby certify that on the _____ day of November, 1976, I served a copy of the foregoing motion and brief, and its appendices on E. C. Chappelle, Jr., Appellant, by delivering the same to counsel of record, Mr. Herschel C. Adcock, 821 Main Street, Post Office Drawer 3037, Baton Rouge, Louisiana 70821.

_____

Joseph F. Keogh, Parish Attorney

Supreme Court, U. S.
FILED
FEB 24 1977
MICHAEL RODAK, JR., CLERK

IN THE

SUPREME COURT OF THE UNITED STATES

April Term, 1977

No. 76-352

E. C. CHAPPELLE, JR.,
Appellant,

versus

THE GREATER BATON ROUGE AIRPORT DISTRICT, ET AL,
Appellees.

On Appeal from the Supreme Court of the State of Louisiana

BRIEF FOR THE APPELLANT

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J. Glenn Dupree
E. Wade Shows

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IN THE

SUPREME COURT OF THE UNITED STATES

April Term, 1977

No. 76-352

E. C. CHAPPELLE, JR.,
Appellant,

versus

THE GREATER BATON ROUGE AIRPORT DISTRICT, ET AL,
Appellees.

On Appeal from the Supreme Court of the State of Louisiana

BRIEF FOR THE APPELLANT

SUMMARY STATEMENT OF THE CASE

This appellant, E. C. Chappelle, Jr. for a period of five years, occupied the position of executive director and secretary of The Greater Baton Rouge Airport District. On May 13, 1974, appellant resigned from this salaried position and was appointed as a commissioner on The Greater Baton Rouge Airport Commission. Subsequently, prior to the termination of the appointed term, the East Baton Rouge Parish Clerk, based upon a legal opinion rendered by The East Baton Rouge Parish Attorney, declared the appellant's position on The

Greater Baton Rouge Airport Commission vacant as it was the opinion of The Baton Rouge Parish Attorney that appellant was not qualified to serve as a member of the Airport Commission since at the time of his appointment, appellant owned no property "assessed" in East Baton Rouge Parish, as required by Louisiana Act 151 of 1969, as implemented by East Baton Rouge Parish Council Resolution Number 8645, adopted on January 14, 1970. As a result of this legal opinion rendered by The East Baton Rouge Parish Attorney and the declaration of vacancy made by the East Baton Rouge Parish Clerk, appellant on March 4, 1975, at The Greater Baton Rouge Airport Commission meeting was formally denied his position as a member of the Airport Commission and removed therefrom.

On February 26, 1975, appellant initially filed a petition in the 19th Judicial District Court in the Parish of East Baton Rouge, State of Louisiana, for injunctive relief seeking to enjoin the municipal authorities from removing the appellant from his position on the Airport Commission alleging that appellant had met all the qualifications of Louisiana Act 151 of 1969 and alternatively that Louisiana Act 151 of 1969 was violative of the Equal Protection and Due Process Clauses of the Fourteenth Amendment to the United States Constitution. Appellant's injunctive relief was denied and on March 4, 1975, appellant was removed from his position of the Airport Commission. On March 5, 1975, the appellant sought in the 19th Judicial District Court for the Parish of East Baton Rouge, State of Louisiana, a declaratory judgment requesting that appellant be deemed to have met the qualifications imposed by Louisiana Act 151 of 1969 and in the alternative requested that Louisiana Act 151 of 1969 be held infirm as violating the Equal Protection and Due Process Clauses of the

Fourteenth Amendment to the United States Constitution. On July 23, 1975, the trial judge held that appellant had not met the qualification imposed by Louisiana Act 151 of 1969 and that Louisiana Act 151 of 1969 was constitutional. The trial judge stated that the right to an appointed office, not being a fundamental right, must be tested by the traditional test of equal protection. The trial judge felt that there was a rational basis for the requirement of ownership of "assessed property" as opposed to "non-assessed property," imposed by Louisiana Act 151 of 1969.

To the trial judge's ruling, the appellant timely appealed on July 28, 1975, to the First Circuit Court of Appeal for the State of Louisiana, the next step in Louisiana's appellant process. Again in this appellate court, the appellant urged the unconstitutionality of Louisiana Act 151 of 1969 in light of the Equal Protection and Due Process Clauses of the Fourteenth Amendment to the United States Constitution. The First Circuit Court of Appeal for the State of Louisiana likewise utilized the traditional test of equal protection and found that there was a rational basis for the classification imposed by the Louisiana Legislature in enacting Louisiana Act 151 of 1969. This appellant, who has expertise in the field of aviation, and who owns substantial amounts of personal or movable property, yet owned no "assessed property," failed to see how "assessed property" owners were somehow more qualified than non-owners of "assessed property." He, therefore, sought to have the judgment of the First Circuit Court of Appeal of the State of Louisiana reviewed. After first timely requesting a rehearing from the First Circuit Court of Appeal, which was refused on April 12, 1976, appellant sought a review from the Supreme Court of Louisiana.

Since appellant had no right to direct appeal to the Supreme Court of Louisiana, as direct appeal is only allowed in Louisiana when a state statute is struck down under a constitutional challenge, appellant sought discretionary remedial writs of the Supreme Court of Louisiana. On May 12, 1976, appellant timely filed in the Supreme Court of Louisiana an application for writs of Certiorari and Review to review the judgment below and specifically ask the Supreme Court of Louisiana to review the constitutionality of Louisiana Act 151 of 1969 in light of the Equal Protection and Due Process Clauses of the Fourteenth Amendment to the United States Constitution. On June 9, 1976, the Supreme Court of Louisiana denied appellant's application for a writ of Certiorari or a writ of Review. The memorandum decision recorded at 332 So.2d 821 stated: "Writ denied; no merit in the assignment of errors." Two of the justices of the Supreme Court of Louisiana felt that the writs should be granted. One of the justices particularly felt that the "writs should be granted. *Turner v. Fouche*, 396 U.S. 346, 90 S.Ct. 532(1970) mandates relief for appellant." The Supreme Court of Louisiana is the highest court in the State of Louisiana.

OPINIONS BELOW

The First Circuit Court of Appeal, State of Louisiana, rendered its opinion in this matter, *Chappelle v. Greater Baton Rouge Airport District*, 329 So.2d 821, (La. Ct. of A, 1976). The denial of the writs of Certiorari and Review and other remedial writs by the Supreme Court of Louisiana is reported as *E. C. Chappelle, Jr. v. The Greater Baton Rouge Airport District, et al.*, 332 So.2d 821.

JURISDICTION

The jurisdiction of the Supreme Court of the United States to review this decision by appeal is conferred by Title 28, United States Code, Section 1257 (2); Federal Code Annotated, Title 28, Section 1257 (2). Probable jurisdiction of this appeal was noted on January 10, 1977.

CONSTITUTIONAL PROVISIONS AND STATUTES INVOLVED

This appeal involves Section 1 of the Fourteenth Amendment, U. S. Constitution and whether Louisiana Act 151 of 1969 violates the Due Process and Equal Protection Clauses of Section 1 of the Fourteenth Amendment to the United States Constitution.

QUESTIONS PRESENTED

I. Does the United States Supreme Court decision styled *Turner v. Fouche* 396 U. S. 346, 90 S.Ct. 532(1970) mandate that Louisiana Act 151 of 1969 be struck down as being violative of the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution?

II. Whether Louisiana Act 151 of 1969 which sets forth a classification of "assessed property" owners and non-owners of "assessed property," a classification not yet examined by this court, is violative of appellant's equal protection and due process rights as provided in the Fourteenth Amendment to the United States Constitution. Incidental thereto is the question whether the criterion of "assessment" as set forth in Louisiana Act 151 of 1969 is somehow rationally related to the

legislative objective sought in enacting that legislation—that is, does ownership of "assessed property" make one more qualified to serve on the Airport Commission than someone who is not the owner of "assessed property," but yet may have substantial connections with the community, may own substantial amounts of non-assessed property, or may have great expertise in the field of aviation.

III. Whether the right to hold an appointed office is a "fundamental right" within the "compelling state interest test" of the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution.

ARGUMENT

I. THE UNITED STATES SUPREME COURT DECISION STYLED *TURNER V. FOUCHE* 396 U. S. 346, 90 S.Ct. 532 (1970) MANDATES THAT LOUISIANA ACT 151 OF 1969 BE STRUCK DOWN AS BEING VIOLATIVE OF THE EQUAL PROTECTION CLAUSE OF THE FOURTEENTH AMENDMENT TO THE UNITED STATES CONSTITUTION.

The underlying question presented to this court is an issue that has never been considered squarely by this court, yet the issue arises from a requirement that has on numerous occasions been struck down by this court—the requirement of ownership of property as a requisite to the exercise of some right or as a requisite to the fulfillment of a qualification for a position.

The question before this court, whether the ownership of "assessed property" as a requisite to an appointed position

is a novel question and is of particular constitutional importance in order to safeguard the protections granted by the Equal Protection and Due Process Clauses of the Fourteenth Amendment to the United States Constitution as interpreted by a long line of decisions of the Supreme Court of the United States. If ownership of "assessed property" was allowed to stand as a constitutional element of classification, the door would be opened to undermine the protection afforded to all individuals, regardless of property ownership, by the Equal Protection and Due Process Clauses of the Fourteenth Amendment to the United States Constitution.

In *Turner v. Fouche,* 396 U. S. 346, 90 S.Ct. 532 (1970), the United States Supreme Court struck down a statutory scheme whereby only "freeholders" or immovable property or real property owners, could qualify for an appointed position as a member of a Georgia County Board of Education. The members of the County Board of Education were appointed by the County Grand Jury. In order to be eligible for such appointment, the person seeking appointment had to own immovable or real property within the county.

The Supreme Court, per Justice Stewart, struck the Georgia statute down on its face as being violative of the Equal Protection Clause of the Fourteenth Amendment. The court stated:

> ". . . the appellants and the members of their class do have a federal constitutional right to be considered for public service without the burden of invidiously discriminatory disqualifications. The State may not deny to some the privilege of holding public office that extends to others on the basis of distinctions that violate federal constitutional guarantees." Citing *Carrington v. Rash,*

380 U.S. 89, 91, 85 S.Ct. 775, 776, 13 L.Ed. 2d, 675; *Lassiter v. North Hampton County Board of Elections*, 360 U.S. 45, 50, 51, 79 S.Ct. 985, 989, 3 L.Ed. 2d, 1070; *Pope v. Williams*, 193 U.S. 621, 632, 24 S.Ct. 573, 575, 48 L.Ed. 817.

The court found it unnecessary to resort to the stricter equal protection test—"compelling state interest." The requirement the court held, whereby the right to hold this appointed public office is tied to the ownership of the immovable or real property:

> ". . . must fall even when measured by the traditional test for a denial of equal protection: whether the challenge classification rests on grounds wholly irrelevant to the achievement of a valid state objective."

Although the Supreme Court of the United States did not consider whether the ownership of "assessed property" was violative of the Equal Protection Clause of the Fourteenth Amendment in *Turner v. Fouche*, supra, the reasoning is equally applicable to a statutory scheme, as the one present before us, whereby only "freeholders" of "assessed property" could qualify for an appointed position.

Under the statutory scheme imposed by Act 151 of 1969, there is the possibility of someone owning a great amount of personal property or real property, yet owning no "assessed property." This person may have a great connection with the community despite the fact that none of his movable property is assessed. This particular appellant although owning no "assessed property," owned substantial amounts of "non-assessed" personal property and was an expert in the field of aviation.

It is submitted that such classification of ownership of "assessed property" is invidious discrimination and violative of the Equal Protection Clause of the Fourteenth Amendment as the ownership of "assessed property" in no rational way indicates a better qualified appointee to the commission of the Baton Rouge Airport District.

II. LOUISIANA ACT 151 OF 1969 IS VIOLATIVE OF APPELLANT'S EQUAL PROTECTION AND DUE PROCESS RIGHTS AS PROVIDED IN THE FOURTEENTH AMENDMENT TO THE UNITED STATES CONSTITUTION.

Notwithstanding the decision of *Turner v. Fouche*, supra, it must be determined whether the provisions of Louisiana Act 151 of 1969, requiring ownership of property appearing on the assessment rolls as a qualification to membership on The Greater Baton Rouge Airport Commission are constitutional in light of the Equal Protection Clause of the Fourteenth Amendment.

This appellant submits that the right to hold this public office, even though an appointed office, is a fundamental right and must not be denied by the arbitrary classification between owners of property and non-owners of such property:

> "Any unjustified discrimination in determining who may participate in political affairs or in the selection of public officials undermine the legitimacy of representative government." *Kramer v. Union Free School District, No. 15*, 395 U.S. 621, 89 S.Ct. 1886, 23 L.Ed. 2d, 583.

This right to the public office of Commissioner, being a fundamental right, must be tested by the stricter test of the Equal Protection Clause, that is, the state must demonstrate

a "compelling state interest" for requiring such a classification. As is readily apparent, there cannot be shown any "compelling state interest" for such arbitrary classification.

It is clear to this appellant that resort to the stricter test of the Equal Protection Clause is not really necessary for even under the traditional test of equal protection, that is, a rational basis for such a classification, this statute is also constitutionally infirm.

> "In determining whether or not a state law violates the Equal Protection Clause, we must consider the facts and circumstances behind the law, the interests which the State claims to be protecting, and the interests of those who are disadvantaged by the classification." *Williams v. Rhodes*, 393 U.S. 23, 30, 89 S.Ct. 5, 10, 21 L.Ed. 2d, 24 (1968).

> "Although at times variously phrased, the traditional test of a statute validity under the Equal Protection Clause is a familiar one: A legislative classification is invalid only 'if it rest(s) on ground wholly irrelevant to achievement of the regulation objective.'" *Kramer v. Union Free School District, No. 15*, 395 U.S. 621, 89 S.Ct. 1886, 23 L.Ed. 2d, 583, citing *Kotch v. Board of River Port Pilot Commission*, 330 U.S. 552, 556, 67 S.Ct. 910, 912, 91 L.Ed. 1093.

See also *McGowan v. Maryland*, 336 U.S. 420, 81 S.Ct. 1101, 6 L.Ed. 2d, 393 where it was stated:

> "The constitutional safeguard is offended only if a classification rests on grounds wholly irrelevant to the State's objective."

It must therefore be determined by this court if the classification between the ability of a property owner* to qualify and the inability of a non-property owner to qualify for a post on the Airport Commission, is a classification that is rationally related to a permissible legislative end. That is, it must be decided if ownership of property is relevant to the performance of the necessary work required of one who is a member of the Airport Commission—if the ownership of property assessed in East Baton Rouge Parish somehow makes one better qualified to serve on that Commission than one who does not own property or better qualified than a property owner whose property does not appear on the assessment rolls of the Parish of East Baton Rouge. If there is no such rational basis for the classification, then such delineation is a denial of the equal protection of the law, and is in violation of the United States Constitution.

In our present situation, the requirement of ownership of property assessed in East Baton Rouge Parish to qualify for membership on the Airport Commission, has no relevant relationship to the qualification or proper performance of the job as a member of the Airport Commission. The mere fact of ownership of property assessed in East Baton Rouge Parish makes such property owner no more qualified than any other person who is a citizen of East Baton Rouge Parish. All members of the parish, whether immovable property owners, movable property owners, or simple citizens, lacking any ownership of property, are all substantially interested in and significantly affected by the recommendations and decisions made by The Greater Baton Rouge Airport Commission. All

* Reference to property owner hereinafter will simply mean a property owner whose property appears on the assessment rolls in the Parish of East Baton Rouge.

of the members of the East Baton Rouge Parish community have an interest in the quality and performance of the airport and many of the decisions made by the members of the Commission have far-reaching consequences throughout the entire community. Decisions and recommendations made by the Commissioner affect the control of traffic throughout the entire vicinity, regardless of ownership of any property. Likewise, many of the decisions will affect the entire tourist trade and the migration of people into and throughout the community. Therefore, ultimately all of the people of the community, whether immovable property owners, movable property owners or simple citizens, lacking ownership of any property, are affected by the actions of The Greater Baton Rouge Airport Commission. It is therefore readily apparent that the state has no reasonable, rational basis in its classification and that the state has no legitimate interest in limiting membership on The Greater Baton Rouge Airport Commission to property owners, much less to owners of property appearing on the assessment rolls of the Parish of East Baton Rouge. Such a classification excludes many members of our community who will be substantially affected, and such exclusion is unnecessary to achieve the anticipated state goal of an airport facility able to meet the needs of the Greater East Baton Rouge Parish community. This classification, brought into existence by Act 151 of 1969, permits inclusion of many persons, who at best, have a remote and indirect interest and at the same time excludes others who have a distinct and direct interest. Likewise, there is no justification for the exclusion of this appellant, E. C. Chappelle, Jr., an interested and informed resident of the Parish of East Baton Rouge. The exclusion of this appellant or any other interested and qualified citizen of the East Baton Rouge Parish area, based upon the

lack of ownership of property assessed in East Baton Rouge Parish, is an irrational classification and is thus a denial of the equal protection of the law.

The United States Supreme Court has been very reluctant to uphold the rationality and thus the validity of classification between property owners and non-owners of property in light of an equal protection challenge. In four recent cases, the United States Supreme Court has struck down classifications that distinguish between property owners and non-owners of property, as denying the equal protection of the laws as guaranteed by the Fourteenth Amendment of the United States Constitution. *Kramer v. Union Free School District*, supra, *Cipriano v. City of Houma*, 395 U.S. 701, 89 S.Ct. 1897, (1969), *City of Phoenix, Arizona v. Kolodziejski*, 399 U.S. 204, 90 S.Ct. 1990, (1970), *Turner v. Fouche*, supra.

Although three of these cases involved the denial of the franchise to otherwise qualified electors, simply because such electors did not own real property, all of these decisions indicate that the highest court of our country does not favor classification which denies certain rights and privileges to persons because such persons lack ownership of property.

In *City of Phoenix, Arizona v. Kolodziejski*, supra, there was involved a challenge to the Arizona Constitution and statutes that exclude non-property owners from voting in elections to improve issuance of general obligation bonds. The United States Supreme Court seemed to indicate that there was an apparent rationally related basis for restricting the vote to real property owners, but yet still struck down such a classification as a denial of equal protection of the laws.

In language equally applicable here, the United States Supreme Court stated:

> "We thus conclude that, although owners of real property have interest somewhat different from the interest of non-property owners in the issuance of general obligation bonds, there is no basis for concluding that non-property owners are substantially less interested in the issuance of these securities than are property owners."

Therefore, the United States Supreme Court, though indicating that there was some reasonably rational basis for such classification, nevertheless struck down this classification as a denial of equal protection. Here, there is present more compelling reasons to strike down the classification imposed by the Louisiana Legislature in Louisiana Act 151 of 1969, as there is lacking in this act any rationally related basis for such classification to meet the desired state interest to have qualified members serve on The Greater Baton Rouge Airport Commission. Ownership of property, much less ownership of property appearing on the assessment rolls of the Parish of East Baton Rouge, is in no way related to the qualifications necessary to perform the job imposed upon a member of The Greater Baton Rouge Airport Commission.

In addition, Louisiana Act 151 of 1969 is a flagrant violation of the Due Process Clause of the United States Constitution. When a state exercises its power in the adoption of any law, there is the requirement that in the exercise of its power, a state must adopt a measure that is rational and reasonable in light of the power which that state has a right to exercise. That is, the state, in adopting the requirement of ownership of "assessed property" in order to qualify to the Airport Commission, must demonstrate a rational connection between

such requirement and its right to establish an Airport Commission, in order to satisfy the Due Process Clause of the United States Constitution. Here, there is a lack of any rational foundation for the requirement of the ownership of "assessed property" in order to qualify for membership on the Airport Commission. The fact that a person owns "assessed property" in the parish is no way indicative of the manner in which he will conduct anticipated goals of the state —to establish an airport that will meet the needs of the area and community. In the words of Justice Stewart in *Turner v. Fouche*, supra, "It seems impossible to discern any interest the qualification can serve." Thus Louisiana Act 151 of 1969 is not only a violation of the Equal Protection Clause, but likewise is a violation of the Due Process Clause of the United States Constitution.

III. THE RIGHT TO HOLD AN APPOINTIVE OFFICE IS A "FUNDAMENTAL RIGHT" WITHIN THE "COMPELLING STATE INTEREST TEST" OF THE EQUAL PROTECTION CLAUSE OF THE FOURTEENTH AMENDMENT TO THE UNITED STATES CONSTITUTION.

Although this honorable court has never passed upon the issue of whether the right to hold public office is a fundamental right within the "compelling state interest" test of the Equal Protection Clauses, that issue is herein presented. The holding of a public office, whether elected or appointed, is the cornerstone of our democratic type of government. There can be no more fundamental right than the right that is fundamental to the continuation of our form of government —the right of all persons, regardless of property ownership, to seek and attain any public office in our governmental structure.

CONCLUSION

This Honorable Court should render a decision in appellant's favor striking down Louisiana Act 151 of 1969, thus granting the appellant the protection granted by the Equal Protection and Due Process Clauses of the Fourteenth Amendment to the United States Constitution. The court in striking down the "assessed property" criterion will thwart another effort not only to cut off fundamental rights, but also to circumvent the United States Supreme Court's holdings of invidious discrimination when ownership of real property is involved.

Respectfully submitted

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PROOF OF SERVICE

I, Herschel C. Adcock, one of the Attorneys for E. C. Chappelle, Jr., Appellant herein, and a member of the Bar of the Supreme Court of the United States, do hereby certify that on the ..... day of February, 1977, I served a copy of the foregoing brief, and its appendices, on The Greater Baton Rouge Airport District, et al, Appellees, in connection with this appeal, by delivering the same to their counsel of record, Mr. Joseph F. Keogh, Parish Attorney, at his office in the Municipal Building, Baton Rouge, Louisiana, and upon Mr. William J. Guste, Jr., Attorney General for the State of Louisiana.

HERSCHEL C. ADCOCK,
Attorney for the Appellant

APPENDIX A

1. Louisiana Act 151 of 1969 at Section 3, the pertinent portion thereof states:

> "Subject to the provisions of Section 5 hereof, there is hereby further created and established a 'Board of Commissioners' (hereinafter called 'Commission') composed of nine (9) members from East Baton Rouge Parish appointed by Authority, and with terms of office designated by Authority. Such appointees shall be qualified electors in and owning property assessed in East Baton Rouge Parish and may be members of the City Council of the City of Baton Rouge or the Parish Council of the Parish of East Baton Rouge. The members of the Airport Commission of the Parish appointed and qualified as of the effective date of this act shall constitute the initial members of Commission."

Section 5 of that act contains no limitations that are pertinent to the matter before this Court.

2. East Baton Rouge Parish Council Resolution Number 8645 at Section 2, the pertinent portion thereof states:

> "SECTION 2. Creation of District. That there is hereby created pursuant to the authority of Article 14, Section 14(d.2) and Act 151 of 1969, an Airport District entitled 'Greater Baton Rouge Airport District,' said District to be composed of the whole of the Parish of East Baton Rouge and to constitute a subdivision of the State of Louisiana within the meaning of Article 10, Section 10, and Article 14, Section 14 of the Constitution of Louisiana. The governing authority of the Airport District shall consist of (i) an Airport Authority; and (ii) a Board of Commissioners, as provided hereinafter and as is provided for in Act 151 of 1969. 'Airport Authority,' subject to the requirements of Section 5 of Act 151 of 1969, consists of the Mayor and Parish Council of the Parish of East Baton Rouge and shall be known and herein referred to as 'Authority.' The officers of the Parish Council and the Parish under the Plan of Govern-

ment shall be the officers of the Authority. The Board of Commissioners shall be known as 'Board of Commissioners of Greater Baton Rouge Airport District' and is hereinafter referred to as 'Commission.' "

Supreme Court, U. S.
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MAR 21 1977
MICHAEL RODAK, JR., CLERK

IN THE

SUPREME COURT OF THE UNITED STATES

April Term, 1977

No. 76-352

E. C. CHAPPELLE, JR.,

Appellant,

versus

THE GREATER BATON ROUGE AIRPORT DISTRICT, ET AL,

Appellees.

On Appeal from the Supreme Court of the State of Louisiana

BRIEF FOR THE APPELLEES

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BRIEF FOR THE APPELLEES

ARGUMENT

I. DOES THE UNITED STATES SUPREME COURT DECISION STYLED *TURNER V. FOUCHE*, 396 U.S. 346, 90 S.CT. 532 (1970) MANDATE THAT LOUISIANA ACT 151 OF 1969 BE STRUCK DOWN AS BEING VIOLATIVE

OF THE EQUAL PROTECTION CLAUSE OF THE 14TH AMENDMENT TO THE UNITED STATES CONSTITUTION?

Though citing several cases whose facts are clearly inapposite to the case at bar, it is clear that appellant in the instant case strongly relies upon the case of *Turner v. Fouche*, 396 U.S. 346, 90 S.Ct. 532 (1970). Appellant argues that the decision in *Turner*, supra, mandates relief for him in the instant case with a different factual setting. Such is not the case. To apply the rule of the *Turner* case, supra, to the instant case would be an illogical and uncalled for extension of the concept of equal protection.

The rule of the *Turner* case, supra, can be properly understood only in relation to the facts thereof. This case involved a Georgia statutory scheme for the appointment of members to a board of education. These board members were appointed by a grand jury. It is obvious from even a cursory reading of the *Turner* case, supra, that the real issue therein involved was a flagrant abuse of the system which systematically excluded Negroes from membership, both of the grand jury and the board of education! See 90 S.Ct. 539-40.

Thus, the context of the *Turner* case, supra, was such that while various statutory requirements might have been used as vehicles of discrimination, the overall effect with which the court was concerned was an obvious invidious discrimination against members of the Negro race. Under these facts, a **free holder** requirement for board membership was struck down. That is, the requirement of ownership of **real property** was held to be violative of the Constitution in considering one for membership on the board of education.

It was pointed out in the decision in *Turner*, supra, that the discriminatory scheme in question was invalid even when measured by the traditional test for equal protection. It was stressed in the decision that 85% of the budget of the school board in question was from sources other than the real property tax. Thus, the ownership of real property bore no real relation to a valid state objective. Again, it is to be remembered that there was evidence in the *Turner* case, supra, of gross calculated discrimination against members of the Negro **race.**

However, this Honorable Court in rendering the decision in *Turner*, supra, was unwilling to announce an across-the-board rule that property requirements are to be viewed as invalid in all circumstances. The Court said:

> "Without excluding the possibility that other circumstances might present themselves in which a property qualification for office holding could survive constitutional scrutiny, we cannot say, on the record before us, that the present free holder requirement for membership on the county board of education amounts to anything more than invidious discrimination." 90 S.Ct. at 542.

With the above factual setting in mind, the facts of the instant case are to be sharply contrasted. There is not even a hint in the instant case that Louisiana Act 151 of the 1969 legislature is applied in such a way as to work an invidious discrimination against any minority. Instead, appellant argues that the mere existence of the property requirement in question (i.e. ownership of "property assessed") constitutes a scheme that is defective on its face when measured by standards of equal protection of the 14th Amendment of the United States Constitution. However, it is obvious that such

a decision cannot be made by this Honorable Court without a full understanding of both the requirement in question, and the "public office" which appellant seeks to have reinstated.

An examination of Act 151 of the 1969 Louisiana Legislature, which allowed the creation of the Greater Baton Rouge Airport District, reveals perhaps more clearly than appellant would desire the true nature of the Board of Commissioners to which appellant seeks reinstatement. Act 151 provides in part:

> ". . . . The governing authority of the Airport District . . . shall consist of the Mayor and Parish Council of the Parish of East Baton Rouge and shall be known and herein referred to as 'Authority,' and the officers of the Parish Council under the Plan of Government shall be the officers of the Authority . . ."

The creation of the Board of Commissioners of the Airport District is accomplished in said Act 151 as follows:

> ". . . there is hereby further created and established a 'Board of Commissioners' . . . composed of nine (9) members from East Baton Rouge Parish appointed by Authority, and with terms of office designated by Authority. Such appointees shall be qualified electors in and owning property assessed in East Baton Rouge Parish, and may be members of the City Council of the City of Baton Rouge or the Parish Council of the Parish of East Baton Rouge. The members of the Airport Commission of the Parish appointed and qualified as of the effective date of this act shall constitute the initial members of the Commission. The Authority shall appoint a director who shall also serve as secretary of the Commission . . . The Authority and Commission shall keep a record of their respective proceedings. Members of the Commission shall not receive any compensation except travel allowance incurred while attending upon the business of the District as approved by the Authority. **The Commission shall be responsible for recommending to Authority the selection of airport sites and facilities for the operation and administration of the same and shall have all powers to act as governing authority of the District as authorized hereunder and which are specifically delegated to it by action of Authority by an ordinance or resolution which may be supplemented and amended from time to time by Authority for such purpose, provided that Authority shall retain the power to suspend or rescind any action or proposed action of Commission . . .**" (Emphasis Added)

It is clear that the position to which appellant seeks reinstatement is an appointed and non-compensated position. Unlike the Board of Education in the *Turner* case, supra, the instant position involves no final authority for decision making, or the expenditure of public funds. The commissioners are appointed by the Parish Council of East Baton Rouge and act merely as an advisory body to the Authority of the District, which is the Parish Council itself. The Authority has final voice on all matters.

To apply the reasoning and rule of the *Turner* case, supra, to the instant factual situation is to fail to recognize the realities of the situation. The property requirement in question is not a restraint on the selective power of the general citizenry, but only on the possible unbridled, autonomous whim and caprice of the Parish Council. The Louisiana Legislature sought not to work any discrimination against a citizen's right to participate in the ultimate decision making process of a public body, but merely to insure that those individuals appointed by a political subdivision (the

Parish Council) have some nexus within the Parish in which the Airport District exists.

The decision in *Turner*, supra, was supported by citing the case of *Kramer v. Union Free School District Number 15*, 395 U.S. 621, 89 S.Ct. 1886. This case dealt with the right to vote. The court there discussed the dilution of a citizen's voice in public affairs, citing the fact that even where a school board is appointed by a mayor, the citizens have an equal, indirect voice in the election process by voting on the mayor. See 395 U.S. 627-629, 89 S.Ct. 1890.

The instant case simply does not involve the same issues of those raised in *Kramer* and *Turner*, supra. In fact, plaintiff cites no case in which the concept of equal protection is stretched (beyond recognition) to apply to facts such as the instant ones. The board to which appellant seeks reinstatement is an advisory body exercising only such functions as are delegated to it by the Parish Council. The right to hold an appointment such as that in question is more in the nature of a privilege than a right.

It is to be noted that it is not the wisdom of the "assessed property" requirement that is here called into question. It may well be possible that the Louisiana Legislature could have chosen other requirements which would better suit the objective of insuring proper attachment to and regard for the community in which the airport district was to be located. However, the same argument which appellant here makes would exist for any requirement for potential commissioners, whether it be residency, education, or one of the prohibited criteria such as wealth, race or religion. Again, the instant requirement operates no deprivation of fundamental rights

of a minority as was present in the *Turner* case, supra. Every qualified elector can cast votes for the Airport District Authority (i.e. the Parish Council). Once elected, however, it is totally within the discretion of the Parish Council as to whom to appoint in the advisory status of the Board of Commissioners. Or rather, it is within their discretion as long as the challenged requirements are met. The restraint is on the Parish Council, **not** on the citizenry of East Baton Rouge Parish.

It is submitted that the requirements in question in the instant case do not in any respect work a deprivation of the rights of individuals and that the rule of the *Turner* case, supra, is inapplicable and should not be applied to the instant factual setting. The application of the *Turner* rule would serve only an unwarranted and uncalled for extension of the equal protection concept and result in a further unwarranted intrusion on the legislative authority of the several states by the federal government.

II. IS LOUISIANA ACT 151 OF 1969 VIOLATIVE OF APPELLANT'S EQUAL PROTECTION AND DUE PROCESS RIGHTS PROVIDED IN THE 14TH AMENDMENT TO THE UNITED STATES CONSTITUTION?

Appellant contends that whether or not the decision in the *Turner* case, supra, mandates relief, the requirement that appellant own "property assessed" in East Baton Rouge Parish is unconstitutional in that it denies him equal protection of the law and due process of law. Any law which discriminates between citizens must be judged according to the right involved and the basis for the discrimination. If the right involved is a fundamental right, then the government must show that there is a "compelling state interest" for the dis-

crimination. If the right involved is not a fundamental right, the discrimination is to be judged by the traditional standards of equal protection.

Prior decisions of this Honorable Court say that among the fundamental rights are marriage (*Loving v. Virginia*, 88 U.S. 1), procreation (*Skinner v. Oklahoma*, 316 U.S. 535), contraception (*Eisenstadt v. Baird*, 405 U.S. 428), the right to vote (*Dunn v. Blumstein*, 405 U.S. 330), the right to have one's vote equally weighed with others (*Reynolds v. Simms*, 377 U.S. 533), the right to travel interstate (*Shapiro v. Thompson*, 394 U.S. 619) and First Amendment rights (*Police Dept. of City of Chicago v. Mosely*, 408 U.S. 92).

If there is no prior authority for holding a given right to be fundamental, the inquiry must be whether or not the right is based on basic values which underlie our society. It is submitted that there can be no rational way in which the right to hold an appointed, non-compensated, advisory position can be held to be a fundamental right. A position, the appointment and removal from which rests within the total discretion of an appointing authority, simply cannot be rationally said to be a fundamental right. More will be said about this later.

Traditional standards of equal protection have been long established. In *McGowan v. Maryland*, 336 U.S. 420, 81 S.Ct. 1101 (1961), this Honorable Court summarized the rule as follows:

> "The constitutional safeguard (equal protection) is offended only if the classification rests on grounds wholly irrelevant to the achievement of the state's ojective. State legislatures are presumed to have acted within their constitutional power despite the fact that, in practice, their laws result in some inequality. A statutory discrimination will not be set aside if any state of facts reasonably may be conceived to justify it." 81 S.Ct. at 1105.

In enacting Act 151 of 1969, the Louisiana legislature sought to insure that the members of the Commission would have a substantial interest in performing their duties effectively and conscientiously. Surely the legislature could have concluded reasonably that property owners of East Baton Rouge would have that interest. To effectuate this objective the legislature chose as its criterion for appointment to the Commission, the ownership of "property assessed in East Baton Rouge Parish." The fact that the determination of property ownership could have been made otherwise than "assessment" in no way militates against the validity of the choice made. In the achievement of a valid legislative objective, there is no requirement under traditional equal protection standards that the legislature choose the best method available, but only that there be a rational basis for the means chosen. A statutory discrimination will not be set aside for violating equal protection if any state of facts may reasonably be conceived to justify it. See *Dandridge v. Williams*, 90 S.Ct. 1153, 397 U.S. 471 (1970).

Louisiana Revised Statutes 47:1956-1957 require every owner of property, **movable and immovable**, to submit to the Parish Assessor a list of that property for assessment purposes. The legislature could have chosen to utilize this requirement as a simple method of determining property ownership for purposes of eligibility for appointment to the Commission under Act 151 of 1969. Such a scheme is not irrational, unless this Court is willing to hold as a matter of law that requiring

someone to have a property interest in a community, before he can be involved in an advisory capacity to a governing body, is unconstitutional.

It is submitted that the legislative scheme employed under Act 151 of 1969 is prima facie constitutional. There has been no allegation that the assessment practices as applied in this case are unconstitutional, nor has there been any evidence adduced on this issue. The overriding constitutional considerations considered by this Honorable Court in *Turner*, supra, *Kramer*, supra, and the other cases cited by appellant are simply not present in the instant case. It is urged again that the situation now before this Honorable Court falls squarely within the realm of what must have been contemplated in writing the *Turner* decision where the court said:

> "Without excluding the possibility that other circumstances might present themselves in which a property qualification for office holding could survive constitutional scrutiny . . ." 90 S.Ct. at 542.

III. IS THE RIGHT TO HOLD AN APPOINTIVE OFFICE A "FUNDAMENTAL RIGHT" UNDER THE EQUAL PROTECTION CLAUSE OF THE 14TH AMENDMENT OF THE UNITED STATS CONSTITUTION?

The issue as framed by appellant and stated above is actually somewhat misleading. It is conceivable that the right to hold an appointive office could, under certain circumstances, become a fundamental right. In the *Turner* case, supra, for example, a local board of education was appointed by a grand jury. This board doubtless had the final authoritative say-so in matters involving school expenditures, school policy, and school administration. All citizens, regardless of

race, sex, ethnic origin, wealth, etc., should have a choice in the decisions made by such board. The instant "Board of Commissioners of the Greater Baton Rouge Airport District" bears little more resemblance to the board of education in *Turner* than a flickering candle does to the noon-day sun.

As pointed out earlier, the Board of Commissioners to which appellant seeks reinstatement is an advisory board. The members of said board exercise only such functions as the governing authority (the Parish Council) chooses to delegate to them. The Authority always has the right to rescind or revoke any prior action taken by the commissioners. The Authority has the right to follow or not to follow the advice of the commissioners. It is difficult to conceive of how the right to hold such an advisory capacity appointment becomes a fundamental right under the equal protection clause.

An analogous situation might be if the Congress of the United States were to pass a law saying that any appointed Presidential Advisor must be a U. S. resident. It can be seen that a citizen of this country, though a non-resident, might be eminently qualified and every bit as loyal, capable and honest as any resident. Thus, the criterion established by Congress could not be said to be a perfect index of whether one would be qualified to serve as Presidential Advisor. Nevertheless, it is submitted that such requirement would be inherently justified and therefore constitutional. Why? Simply because the right to act as presidential advisor is not a fundamental right under the equal protection clause, any more than is the right to act as a member of the Board of Commissioners of the Greater Baton Rouge Airport District.

It is again urged that the requirement of ownership of

"assessed property" does not work an invidious discrimination against the citizens of East Baton Rouge Parish, but merely acts as a minimal guideline in bridling the otherwise unlimited authority of the Parish Council in selecting the members of the Board of Commissioners.

CONCLUSION

In summation, it is urged that the right to hold the appointive office in question in the instant case is not a fundamental right. The requirement of ownership of "assessed property," while possibly not the best criterion available to the Louisiana legislature, cannot be said to "rest on grounds wholly irrelevant to the achievement of the state's objective." Accordingly, it is submitted that the equal protection and due process rights of appellant herein have not been in any way violated by the application of Louisiana Act 151 of 1969. Appellant's demands should be rejected and his claim dismissed at his costs.

PROOF OF SERVICE

I, Joseph F. Keogh, Attorney for the Greater Baton Rouge Airport District, et al, Appellees herein, do hereby certify that on the_____day of March, 1977, I served a copy of the foregoing motion and brief, and its appendices on E. C. Chappelle, Jr., Appellant, by delivering the same to counsel of record, Mr. Herschel C. Adcock, 821 Main Street, Post Office Drawer 3037, Baton Rouge, Louisiana 70821.

Joseph F. Keogh, Parish Attorney

APPENDIX A

1. Louisiana Act 151 of 1969 at Section 3 states:

"The Parish Council of the Parish of East Baton Rouge (hereinafter sometimes called 'Council') may create an Airport District composed of the whole of the Parish of East Baton Rouge, and such Airport District shall be a subdivision of the State within the meaning of Article 10, Section 10 and Article 14, Section 14 of the Louisiana Constitution and of the sections of the Revised Statutes relating to the paying of taxes, incurring of debt and the issuing of bonds. Before the creation of the District, the Council shall give notice of intention to create the Airport District which notice shall be ordered by resolution stating the intention to create such District, and the territory of which the District is to be composed. The notice shall embrace substantially all matters required to be in the resolution ordering the notice and shall set forth in addition the date, hour and place at which the Council will be in open session conduct a hearing and proceed to create the District. The notice of intention to create the District shall be published once a week, the first publication being not less than fifteen (15) days before the date fixed for the hearing in the official journal of the Parish. At the time and place designated in the notice, the Council shall hear all objections interposed to the proposed District and may recess the hearings from time to time. After disposing of all objections, the Council shall, if it determines to create the Airport District, adopt a resolution confirming the creation of the District and giving it a name entitled "Greater Baton Rouge Airport District." Notice of the formation of the Airport District shall be given by publication one time in the same newspaper published in the Parish in which the notice of intention to create the District was published. The governing authority of the Airport District subject to the provisions of Section 5 hereof, shall consist of the Mayor and Parish Council of the Parish of East Baton Rouge and shall

be known and herein referred to as 'Authority,' and the officers of the Parish Council under the Plan of Government shall be the officers of the Authority. An airport District created hereunder is a public corporation and has all powers of public corporations, including perpetual existence, the right and power to incur debt and contract obligations, to sue and be sued, to have a corporate seal and to perform in its corporate capacity and in its corporate name all actions necessary and proper for the purpose of financing, acquiring, constructing, maintaining and operating airports and airport facilities including both movable and immovable property. No bonds shall be issued by the Airport District authorized under this section until they are authorized by a vote in majority and amount of the property taxpayers qualified to vote under the Constitution and Laws of the State of said District, who vote at an election on such question. The Airport District created under this section may call a special election and submit to the qualified taxpaying voters of the Airport District the question of incurring debt and issuing negotiable bonds under this section. The election shall be ordered by resolution which shall state the purposes for which the debt is to be incurred, the amount of the debt, the number of years for which the bonds are to run and the maximum rate of interest. The method of incurring and refunding debt and issuing negotiable bonds under this section shall be the same as that prescribed in Chapter 4, Sub-Title 2 of Title 39 of the Louisiana Revised Statutes. The District shall have all powers generally vested in Airport District including, for example, the power authorized by R. S. 2:329, subject to the requirement necessary and provided. This section is full authority for the creation of the Airport District herein authorized without reference to any other part. No proceedings with respect to the creation of such Airport District are necessary except as required by this section. The District shall constitute an instrumentality and an agency of the State of Louisiana, exercising public and essential governmental functions, and the exercise

by the District of the powers conferred herein shall be deemed and held to be essential governmental functions of the State of Louisiana and of the Parish of East Baton Rouge. As the exercise of the powers granted hereby will be in all respects for the benefit of the people of the State and of the area for the increase of their commerce and prosperity, the District shall not be required to pay any taxes or assessments upon any property acquired or used by it under the provisions of this law, or upon the income therefrom, and any bonds issued hereunder and the income therefrom shall be exempt from taxation by the State of Louisiana and by any parish, municipality or political subdivision of the State. The District shall not be subject in any respect to the authority, control or supervision of any regulatory body of the State or any political subdivision thereof except as herein provided, but its books and records shall be subject to audit annually in the same manner as is provided in the Plan of Government for the Parish of East Baton Rouge and the City of Baton Rouge (hereinafter called 'Plan of Government') for the audit of all other departments and agencies of the Parish and City. Except as hereinafter provided, its employees shall be members of the classified service established by Chapter 9 of said Plan of Government, and its officers and employees shall be subject to the provisions of the Code of Ethics of the Parish of East Baton Rouge and the City of Baton Rouge, provided that the Rules of the classified service pertaining to employment of personnel by District for any facility owned or operated in 'Adjoining Parish' as defined in Section 5 hereof shall afford no preference to residents of East Baton Rouge Parish over residents of 'Adjoining Parish.' The domicile of the District shall be in the City of Baton Rouge, provided, however, that by appropriate action of its governing authority, said domicile may be relocated within the District. The Mayor-President of the Parish Council shall serve as the President and the presiding officer of the District. The Authority shall be governed by and act with regard to procedure pursuant to those pro-

visions of the Plan of Government applicable to the Parish Council of the Parish of East Baton Rouge, and may adopt such rules of procedure as may be consistent with said Plan of Government and reasonable and proper for its government. Subject to the provisions of Section 5 hereof, there is hereby further created and established a 'Board of Commissioners' (hereinafter called 'Commission') composed of nine (9) members from East Baton Rouge Parish appointed by Authority, and with terms of office designated by Authority. Such appointees shall be qualified electors in and owning property assessed in East Baton Rouge Parish and may be members of the City Council of the City of Baton Rouge or the Parish Council of the Parish of East Baton Rouge. The members of the Airport Commission of the Parish appointed and qualified as of the effective date of this act shall constitute the initial members of Commission. The Authority shall appoint a Director who shall also serve as Secretary of Commission. As soon as practicable after their appointment, the Commission shall meet at the domicile and elect from their number a Chairman, a Vice-Chairman, a Treasurer and such other officers as may be considered appropriate. The Treasurer of Commission may be selected by the Commission from among their members or may be otherwise selected by the Commission. The Director, Secretary and the Treasurer shall be unclassified. Their duties shall be defined and their salaries fixed by the Commission. The Commission shall adopt such rules and regulations as may be necessary for Commission's government. A majority of the Commission shall constitute a quorum for the transaction of business, but in no event, shall a resolution, ordinance or other action of the Commission become effective unless such action shall have been approved by not less than a majority of the entire membership. The Authority and Commission shall keep a record of their respective proceedings. Members of the Commission shall not receive any compensation except travel allowance incurred while attending upon the business of the District as approved

by Authority. The Commission shall be responsible for recommending to Authority the selection of airport sites and facilities for the operation and administration of same and shall have all powers to act as governing authority of District as authorized hereunder and which are specifically delegated to it by action of Authority by an ordinance or resolution which may be supplemented and amended from time to time by Authority for such purpose, provided that Authority shall retain the power to suspend or rescind any action or proposed action of Commission. Subject to the provisions of the Plan of Government, Authority (or Commission if authorized by Authority) may employ such engineers, accountants, construction and financial advisors, attorneys, superintendents and other employees and agents as may be necessary and it shall designate one newspaper in the Parish of East Baton Rouge of general circulation as the official journal of the District. District is fully authorized to cooperate financially and otherwise with the Government of the United States, the State of Louisiana, and with any political subdivisions, instrumentalities or agencies of said State and said Federal Government in carrying out any of the powers hereunder. The District shall have the power to sue and be sued in its own name, except that this shall not be construed as a waiver of governmental immunity otherwise applicable to the District, to own all facilities and all properties incidental and necessary to carry out all purposes of District and powers authorized hereunder, including real and personal, servitudes and rights-of-way (or any combination thereof); to acquire by expropriation, purchase, lease or otherwise said land and other property, to enter into contracts for the use of the facilities owned or operated by District or any portion thereof, with any person or corporation, public or private, with the United States, the State of Louisiana or any of their various agencies, or with any political subdivision or agency of said U. S. Government, the State or with any combination thereof, provided that no exclusive lease agreement for the business of furnish-

ing of fuels for aircraft shall be entered into, nor shall Authority conduct or engage in such business. Taxes as authorized by Article 10, Section 10 and Article 14, Section 14 of the Constitution of Louisiana levied by District shall be entitled to the benefit of the exemption and reimbursal authorized by R. S. 39:253 or any similar reimbursals as the law of Louisiana may hereafter be amended.